

DEC 10 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI
JEANNE HICKS, Clerk
By: D. Chamberlain
Deputy

STATE OF ARIZONA,) Yavapai Superior
) Court No.
) P1300CR20081339
Plaintiff,)
) JURY TRIAL
vs.)
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
_____)

---o0o---

Proceedings held before the Honorable Warren Darrow

---o0o---

Prescott, Arizona August 27, 2010

Sandra K Markham, CR, RPR, CSR
Certified Reporter
Arizona License No. 50001

APPEARANCE OF COUNSEL:

For Plaintiff:
JOSEPH BUTNER
JEFFREY PAUPORE,
Deputy County Attorneys,
Yavapai County Attorney's Office.

For Defendant:
JOHN M. SEARS,
Attorney at Law.

LARRY HAMMOND,
Attorney at Law.

ANNE CHAPMAN,
Attorney at Law.

I N D E X

WITNESSES:

PAGE

LAURA FULGINITI

10

Direct Examination by Mr. Butner

11

Cross-Examination by Mr. Sears

114

Redirect Examination by Mr. Butner

203

Jury Questions

227

Redirect Examination by Mr. Butner

234

Recross-Examination by Mr. Sears

237

09:11:08 1 THE COURT: We are on the record with the
09:11:14 2 defendant and all of the attorneys present, and Mr. King
09:11:19 3 just indicated there was some kind of question regarding
09:11:23 4 exhibits I think.

09:11:24 5 Mr. Sears.

09:11:24 6 MR. SEARS: Your Honor, this morning we were
09:11:27 7 presented with a stack of color photographs that the State
09:11:31 8 has indicated it wants to use with Dr. Fulginiti and in
09:11:35 9 looking at them, there are nine separate photographs of
09:11:39 10 the same fracture on the right skull side of the victim's
09:11:43 11 skull. I will concede they are taken -- some of them are
09:11:48 12 taken from slightly different angles or closeness to the
09:11:53 13 wound, but I think they are cumulative and I see -- I
09:11:56 14 think we'd, before the jury comes in rather than waste
09:11:59 15 their time, let you look at them, your Honor, and
09:12:02 16 determine whether it's necessary and appropriate for the
09:12:05 17 State to be permitted to offer all nine of these
09:12:09 18 photographs of the same injury.

09:12:11 19 THE COURT: Okay. Mr. Butner, general --

09:12:15 20 MR. BUTNER: Judge, I am not trying to load up
09:12:18 21 photographs of the fracture of the right side of the
09:12:19 22 skull. We have marked, I think, basically almost all of
09:12:25 23 Dr. Fulginiti's photographs, right? Yes. And Mr. Hammond
09:12:42 24 placed into evidence one, two, three, four, five, six
09:12:46 25 photographs during his examination of Dr. Keen and then

09:12:52 1 Dr. Fulginiti indicated that although those photographs
09:12:57 2 were of some significant benefit, she needed some other
09:13:01 3 photographs and I can't tell you exactly at this point in
09:13:07 4 time which ones she needed.

09:13:11 5 Let's see. She needed -- well --

09:13:22 6 THE COURT: When you get them together, I would
09:13:23 7 like to come down there and then at least the three of us
09:13:26 8 can look at them most expeditiously.

09:13:28 9 MR. SEARS: I can show you the nine photographs
09:13:30 10 very easily, your Honor.

09:14:11 11 THE COURT: Thank you. Phil, if you would hand
09:14:44 12 these to Mr. Butner so he can get them in order, so when
09:14:47 13 we go through them, everyone will have the same sequence.

09:14:51 14 MR. SEARS: Your Honor, in the same vein, there
09:14:54 15 are three separate photographs that the State has marked
09:14:56 16 of the teeth and upper and lower jaw of the victim all
09:15:05 17 taken at the same time and these pictures are obviously
09:15:09 18 unsettling and they appear to us to be three virtually
09:15:12 19 identical pictures and I would ask that we have some
09:15:17 20 guidance as to which ones, if any, of those pictures the
09:15:20 21 State could offer. Seems cumulative to offer all three of
09:15:24 22 them.

09:18:18 23 MR. BUTNER: I have eliminated -- we don't have
09:18:27 24 the exhibit -- yeah, we do. But we don't have it on the
09:18:29 25 rest of the exhibits.

09:18:30 1 A VOICE: Yes.

09:18:31 2 MR. BUTNER: Okay. Good. I have eliminated
09:18:35 3 Exhibits Number 3009, 3011, 3012, 3013, 3016, 3017, 3018,
09:18:54 4 3019, 3020, 3023, 3021, 3031. We had marked them just out
09:19:17 5 of an abundance of caution. We were not actually planning
09:19:20 6 on using all of them unless for some reason there was --
09:19:23 7 confusion arose or something along those lines. Something
09:19:26 8 that wasn't depicted in one photograph as being discussed.

09:19:34 9 So I don't think that these are cumulative,
09:19:42 10 Judge. There's a necessity for all of them according to
09:19:45 11 the witness.

09:19:46 12 THE COURT: The exhibits that Mr. Sears handed
09:19:50 13 me, those remain? Those are the ones you want?

09:19:54 14 MR. BUTNER: I don't know exactly what Mr. Sears
09:19:56 15 handed you.

09:19:57 16 THE COURT: Well --

09:19:58 17 MR. SEARS: Nine pictures of the fracture on the
09:20:00 18 right side of the skull and three pictures of the upper
09:20:03 19 and lower jaw with the teeth in place.

09:20:05 20 THE COURT: Phil brought those over there so that
09:20:07 21 you could see.

09:20:08 22 MR. BUTNER: Right. Could I compare them? Do
09:20:09 23 they have exhibits numbers on them?

09:20:11 24 MR. SEARS: They do.

09:20:12 25 MR. BUTNER: Where are they?

09:20:14 1 MR. SEARS: It's your set.

09:20:16 2 THE COURT: Phil handed -- gave -- handed you

09:20:19 3 that set.

09:20:20 4 MR. BUTNER: Could I get it back then and I will

09:20:22 5 compare it with what I just pulled out, or are you going

09:20:27 6 over the numbers while I was --

09:20:29 7 MS. CHAPMAN: I think we only got -- some of

09:20:30 8 these are the yeses and these are the no's.

09:20:33 9 A VOICE: I have some, too. These are the no's.

09:20:36 10 Hold on. There's more. These are yeses.

09:20:50 11 MR. BUTNER: Those are yeses. I don't have to

09:20:52 12 worry about those.

09:20:54 13 A VOICE: Well, check it.

09:20:56 14 THE BAILIFF: Make sure you've got the same

09:20:58 15 numbers.

09:20:59 16 MR. BUTNER: Deb, why don't you check the yeses.

09:21:06 17 I don't want to get them confused now. I don't know what

09:21:09 18 that is. I thought those were no's.

09:21:11 19 THE BAILIFF: Those are the no's.

09:21:21 20 MR. BUTNER: These are the ones I am not using.

09:21:26 21 These are the yeses?

09:21:29 22 THE BAILIFF: Those are the no's.

09:21:30 23 MR. BUTNER: Those are no's.

09:21:32 24 I will take care of these.

09:21:34 25 THE COURT: Here's what we are going to do.

09:21:36 1 Here's what I am going to direct. The photos that will be
09:21:47 2 admitted are ones that the expert witness indicates
09:21:52 3 actually illustrate a unique feature so there won't be
09:21:57 4 duplication. That will be handled in the foundation. It
09:22:00 5 won't come in unless the witness testifies this is really
09:22:04 6 a photo that would assist in explaining the testimony.
09:22:07 7 That will really be the additional test rather than just
09:22:10 8 putting photos in and then having the witness look at it
09:22:14 9 and say, well, this doesn't really do much more than this
09:22:18 10 or whatever.

09:22:18 11 I think there just needs to be additional
09:22:20 12 foundation, Mr. Sears.

09:22:22 13 MR. SEARS: May we assume that the State is going
09:22:23 14 to use the screen for the jury to show these photographs?

09:22:27 15 THE COURT: Are we intending to do that,
09:22:29 16 Mr. Butner?

09:22:29 17 MR. BUTNER: If that's what you want me to do,
09:22:30 18 not use the overhead, but use the screen?

09:22:33 19 MR. SEARS: That would be our request of these.

09:22:34 20 MR. BUTNER: I don't have any objection.

09:22:36 21 THE COURT: We have done this uniformly so far,
09:22:37 22 so I would prefer that as well.

09:22:38 23 MR. BUTNER: Sure.

09:22:39 24 MR. SEARS: Thank you.

09:22:40 25 THE COURT: With regard to the photographs of the

09:22:44 1 jaw, the same thing, Mr. Butner.

09:22:48 2 MR. BUTNER: There is one I think that we are
09:22:49 3 using, Judge, and not more than one.

09:22:55 4 THE COURT: Here is what I would suggest. If
09:22:58 5 three photos were given to Dr. Fulginiti and she's asked
09:23:03 6 are there one of these that you can use to illustrate your
09:23:06 7 testimony, if she has one, then fine. If for some reason
09:23:09 8 she really believes two are necessary, then she could use
09:23:14 9 those.

09:23:14 10 Mr. Sears.

09:23:15 11 MR. SEARS: Wouldn't it make sense rather than
09:23:17 12 having this discussion constantly in front of the jury to
09:23:20 13 allow the State to have a moment or two with Dr. Fulginiti
09:23:23 14 and quickly go through those photographs which ones she
09:23:26 15 would need? It may be we will have no objections after
09:23:30 16 that. Dr. Fulginiti is a highly trained and professional
09:23:33 17 person. I trust her judgment on matters such as that, but
09:23:36 18 I would hate to have these kind of things in front of the
09:23:39 19 jury. It seems unnecessary.

09:23:41 20 THE COURT: Mr. Sears, I agree and I think
09:23:43 21 Mr. Butner might well agree with that as well.

09:23:47 22 Please let's spend the time doing that and
09:23:51 23 we do need to commence as soon as possible.

09:23:54 24 MR. SEARS: Thank you, your Honor.

09:23:56 25 (Recess.)

1 (Whereupon, the following proceedings were held in
2 open court in the presence of the defendant, all counsel,
09:43:22 3 the jury, and the Court, to wit:)

09:43:22 4 THE COURT: We are on the record in State versus
09:43:30 5 Steven Carol Democker. The defendant, all of the
09:43:35 6 attorneys, and the jury are present and, Mr. Butner, you
09:43:40 7 may call your next witness.

09:43:41 8 MR. BUTNER: Thanks, Judge. I would call Laura
09:43:45 9 Fulginiti to the stand.

09:44:05 10 THE COURT: Dr. Fulginiti, if you would please
09:44:07 11 stand where the bailiff directs you. Then raise your
09:44:13 12 right hand and be sworn by the clerk.

09:44:15 13 LAURA FULGINITI

09:44:25 14 called, sworn, and testified as follows:

09:44:25 15 THE COURT: Please be seated here at the witness
09:44:27 16 stand.

09:44:38 17 MR. SEARS: Mr. Butter, could you possibly move?
09:44:41 18 You're directly between me and the witness. Another
09:44:47 19 couple of feet. Thank you. That will work.

09:44:49 20 MR. BUTNER: Here.

09:44:51 21 THE WITNESS: I could stand out in the hall.

09:44:55 22 MR. BUTNER: I think he wants me to stand in the
09:44:57 23 hall.

09:44:58 24 MR. SEARS: As long as we're moving the podium.

09:45:00 25 THE COURT: If you would please start by stating

09:45:03 1 and spelling your full name.

09:45:03 2 THE WITNESS: My name is Laura Fulginiti. F as
09:45:07 3 in Frank U-L-G-I-N-I-T-I.

09:45:11 4 THE COURT: Thank you.

09:45:12 5 Mr. Butner.

09:45:14 6 DIRECT EXAMINATION

09:45:14 7 MR. BUTNER: Thanks.

09:45:14 8 Q What is your occupation?

09:45:15 9 A I'm a forensic anthropologist.

09:45:17 10 Q Would you tell us what a forensic anthropologist
09:45:23 11 is, please?

09:45:24 12 A A forensic anthropologist is someone who learns
09:45:27 13 skeletal biology and also about all parts of anthropology
09:45:32 14 and then we take our knowledge of human anatomy and the
09:45:35 15 skeleton and apply it to individuals who are recovered
09:45:40 16 from situations where there are suspicious or unusual
09:45:43 17 circumstances regarding their death.

09:45:45 18 Q So you deal with people's human remains that have
09:45:53 19 been discovered under unusual situations?

09:45:56 20 A Yes.

09:45:56 21 Q And how long have you been a forensic
09:46:00 22 anthropologist?

09:46:01 23 A Am I required to answer that question.

09:46:03 24 Q You are required. You're under oath, too.

09:46:05 25 A Okay. Almost 20 years.

09:46:07 1 Q And where have you been performing the tasks of
09:46:18 2 your occupation as a forensic anthropologist?

09:46:21 3 A For the most part, I have worked in Maricopa
09:46:24 4 County, but I am also a consultant for the northern
09:46:27 5 counties in Arizona, a county in Georgia. For a while I
09:46:31 6 was working with Clark County in Nevada and I've worked
09:46:35 7 for the Grand Canyon National Park investigators, also.

09:46:38 8 Q And would you tell us about the education that
09:46:47 9 you have had to prepare yourself for your occupation as a
09:46:50 10 forensic anthropologist?

09:46:52 11 A A bachelor's degree from Colorado College in
09:46:55 12 Colorado Springs and I have a master's and Ph.D. from the
09:46:58 13 University of Arizona which is that evil school to the
09:47:01 14 south, and I also have board certification from the
09:47:05 15 American Board of Forensic Anthropology.

09:47:08 16 Q And are you credentialed to teach at any places?

09:47:13 17 A Yes, I am. I teach at Arizona State University
09:47:16 18 and I have taught in the past at the Colorado College.

09:47:19 19 Q How long have you taught at Arizona State?

09:47:22 20 A Oh, I think it's going on four -- I teach every
09:47:26 21 other year, so I think I just completed my fourth time
09:47:30 22 there.

09:47:30 23 Q Okay. And Colorado College?

09:47:35 24 A Oh, I did my first sabbatical replacement there
09:47:41 25 in 1990 and I have done several since then, so I think

09:47:45 1 probably four or five times there, also.

09:47:46 2 Q And what do you teach when you teach?

09:47:50 3 A I teach advanced forensic anthropology.

09:47:52 4 Q And have you done any special projects during the
09:48:05 5 performance of your occupation and what I mean by special
09:48:08 6 projects is I mean of an academic nature as a forensic
09:48:12 7 anthropologist?

09:48:12 8 A Are you just talking about research and things
09:48:14 9 like that?

09:48:15 10 Q Exactly.

09:48:15 11 A Yes. I have done research on the determination
09:48:18 12 of age at death in skeletal remains. I have done research
09:48:22 13 on the injury patterns that you see in motor vehicle
09:48:27 14 versus pedestrian accidents on -- typically that's
09:48:30 15 injuries to the legs from someone being impacted by a
09:48:34 16 vehicle. And I have also done some experiments on
09:48:37 17 different types of corrosive substances, different types
09:48:40 18 of acids and what they can do to bone.

09:48:42 19 Q And have you taught any seminars?

09:48:46 20 A Yes.

09:48:47 21 Q Who have you taught seminars for?

09:48:49 22 A Practically everyone that lives in the State of
09:48:51 23 Arizona has heard my lecture at one time or another.

09:48:54 24 Q Okay. But your seminars, were they directed at
09:48:58 25 specific audiences?

09:49:00 1 **A** The seminars, if you're referring to like the
09:49:03 2 surface skeleton dead body recovery course that I teach,
09:49:06 3 that is directed at law enforcement. I have taught for
09:49:09 4 the Arizona Homicide Investigators Association, various
09:49:13 5 civic organizations around the state. But the seminars in
09:49:18 6 particular, the most numerous ones that I have done is the
09:49:22 7 buried body recovery class.

09:49:24 8 **Q** And have you published any of your research?

09:49:32 9 **A** Yes, I have.

09:49:34 10 **Q** Would you tell us what publications you have --

09:49:36 11 **A** Well, okay. I present papers every year at the
09:49:42 12 American Academy of Forensic Sciences and that is a --
09:49:47 13 that is the umbrella organization for forensics. It has
09:49:50 14 over 4,000 members and there's a meeting every year of the
09:49:53 15 national academy. There are eleven sections in the
09:49:56 16 academy, so it's a huge meeting. Everybody goes and
09:49:59 17 presents either a poster or a paper and I have given some
09:50:03 18 form of presentation in that.

09:50:06 19 I have also published research on the acid
09:50:09 20 experiments and also on the motor vehicle versus
09:50:13 21 pedestrian and I did one paper on the murder of border
09:50:17 22 crossers in Arizona.

09:50:18 23 **Q** And how long have you been publishing so to
09:50:22 24 speak?

09:50:22 25 **A** I think the first publication that I ever had was

09:50:25 1 1990.

09:50:27 2 Q And when's the most recent?

09:50:29 3 A 2009 or ten. Ten I believe.

09:50:36 4 Q And are you a member of any professional
09:50:42 5 organizations associated with your profession?

09:50:46 6 A Yes. I am a fellow of the American Academy of
09:50:49 7 Forensic Scientists. I also served as the chair of the
09:50:51 8 Physical Anthropology Section. I have been asked to be
09:50:54 9 the co-chair of the entire meeting for 2012, which is a
09:50:58 10 huge honor for me.

09:51:00 11 I am a member of Sigma Xi which is a
09:51:02 12 scientific organization. I am a member of the American
09:51:05 13 Association of Physical Anthropology, and I am the chair
09:51:10 14 of the Jeffrey T. Fulginiti Memorial. I can't remember
09:51:15 15 what we call it. Board.

09:51:17 16 Q And what about the organization associated with
09:51:26 17 the Tempe Police Department and the Butterfield Landfill?

09:51:30 18 A I have had the privilege of serving twice in the
09:51:33 19 landfill. Once with Phoenix Police Department for six
09:51:36 20 weeks. We were looking for a young boy, 14 years old, and
09:51:39 21 the second time for the Tempe Police Department for three
09:51:42 22 months. We were looking for a young mother and we were
09:51:45 23 unsuccessful in both situations.

09:51:47 24 Thank you so much for reminding me of that.

09:51:50 25 Q I'm sorry to do that.

09:51:52 1 A That's okay.

09:51:53 2 Q Do I --

09:51:53 3 A I have made my peace with it.

09:51:55 4 Q And have you received any honors?

09:52:06 5 A I won the J. Larry Angel student paper award when
09:52:10 6 I was a student at the University of Arizona, and I was
09:52:13 7 given an award from the Phoenix PD and also Tempe PD,
09:52:17 8 mostly for just surviving the landfill situation. And
09:52:21 9 then I was given an award by the Maricopa County Sheriff's
09:52:24 10 office for assisting in the recovery of two young men from
09:52:28 11 an airplane crash.

09:52:30 12 Q And have you testified as an expert witness?

09:52:37 13 A Yes.

09:52:39 14 Q Where have you been qualified to testify as an
09:52:42 15 expert witness?

09:52:43 16 A Here in Yavapai. I am also in Maricopa County,
09:52:46 17 and in Nevada in federal court, and in Colorado Springs.
09:52:53 18 I'm sorry. I can't think -- I think that was District
09:52:56 19 Court.

09:52:56 20 Q US District Court of Colorado?

09:52:58 21 A No. It's like Superior Court, but they call it
09:53:01 22 District Court.

09:53:01 23 Q That's right. State District Courts.

09:53:03 24 A Yes.

09:53:04 25 Q And what about your connection to Georgia? I

09:53:06 1 didn't quite get that.

09:53:07 2 **A** Okay. That's kind of a weird situation. There's
09:53:10 3 a Medical Examiner in Georgia who uses me for skeletal
09:53:13 4 remains analysis because she doesn't have access to a
09:53:17 5 forensic anthropologist.

09:53:19 6 **Q** What county of Georgia is that?

09:53:21 7 **A** Gouinnett County. G-O-U-I-N-N-E-T-T.

09:53:24 8 **Q** And what is the main city associated with that
09:53:28 9 county? Do you know?

09:53:31 10 **A** I don't. I probably should know that, but I
09:53:33 11 don't.

09:53:33 12 **Q** Have you ever had to testify in Georgia?

09:53:35 13 **A** No.

09:53:36 14 **Q** And so you have testified in Yavapai County
09:53:39 15 already?

09:53:40 16 **A** Yes. Yes.

09:53:40 17 **Q** And been qualified as an expert witness in
09:53:42 18 Yavapai County?

09:53:43 19 **A** Yes.

09:53:44 20 **Q** When was the first time you were qualified as an
09:53:46 21 expert witness in a Superior Court in Arizona?

09:53:49 22 **A** That was in 19 -- in the late 90s I did a case
09:53:54 23 with John Ditsworth.

09:53:56 24 **Q** How many times have you testified as an expert
09:54:01 25 witness in superior courts in Arizona?

09:54:03 1 **A** I think it's bordering on 20, but I haven't
09:54:06 2 actually ever sat down and figured it out.

09:54:09 3 **Q** And in this particular case, how is it that you
09:54:16 4 came to be involved in the homicide investigation of
09:54:21 5 Virginia Carol Kennedy?

09:54:22 6 **A** My first involvement came from a phone call from
09:54:26 7 Sergeant Luis Huante who had let me know that they were
09:54:29 8 working a homicide investigation involving a female and he
09:54:34 9 wanted to give me a heads-up that her head had suffered a
09:54:37 10 lot of trauma and they thought they might need me to do a
09:54:40 11 reconstruction.

09:54:41 12 **Q** Do you recall when you received this call from
09:54:46 13 Sergeant Huante?

09:54:46 14 **A** I don't recall the date. I was in my truck when
09:54:49 15 he called me. I do remember that. I think in the
09:54:52 16 interview Mr. Sears told me it was July 3rd, but I
09:54:57 17 don't -- I don't have an independent recollection of that.

09:54:59 18 **Q** So the early part of July of 2008?

09:55:03 19 **A** Yes.

09:55:04 20 **Q** And after receiving that call, did you do
09:55:09 21 anything special in preparation for being involved in this
09:55:13 22 investigation?

09:55:13 23 **A** I informed the admitting staff at the Maricopa
09:55:16 24 County Medical Examiner that we would be receiving a skull
09:55:18 25 from Dr. Keen.

09:55:20 1 Q And when did you ultimately receive the body of
09:55:26 2 Virginia Carol Kennedy for your examination?

09:55:29 3 A The first time that the body was received, I
09:55:32 4 didn't actually receive it myself, but it came to the
09:55:35 5 office on July 8, 2008 in the afternoon.

09:55:39 6 Q And did you then proceed with an examination
09:55:44 7 after that?

09:55:45 8 A I did not.

09:55:46 9 Q Are you aware of what happened with the body at
09:55:50 10 this point in time?

09:55:50 11 A Yes.

09:55:51 12 Q Was it transmitted back to Yavapai County?

09:55:53 13 A Yes, it was.

09:55:54 14 Q And then when did the body get retransported back
09:56:00 15 to Maricopa County for your examination?

09:56:02 16 A The body did not come back to me. Only the head
09:56:05 17 came back and that was on July 16, 2008.

09:56:09 18 Q And is that what you needed for your examination?

09:56:13 19 A Yes.

09:56:14 20 Q Did you need any other body parts?

09:56:16 21 A No.

09:56:17 22 Q And so would you describe for us the process that
09:56:25 23 you engage in to perform your examination, please?

09:56:29 24 A When I receive the skull pieces from a case like
09:56:32 25 this, I take -- I take as much of the soft tissue as I can

09:56:38 1 off with the scalpel or with forceps and then I macerate
09:56:43 2 the bones. This involves using hot water and a non-bleach
09:56:48 3 detergent to remove all of the remaining soft tissue, and
09:56:50 4 then I allow it to dry and then I perform a reconstruction
09:56:54 5 using glue so that essentially it's like doing a jigsaw
09:56:58 6 puzzle.

09:56:59 7 Q And is that what you did in this particular case
09:57:01 8 with the skull of Virginia Carol Kennedy?

09:57:05 9 A Yes.

09:57:05 10 Q And as I understand what you have told me, you
09:57:13 11 began this process on July 16 of 2008?

09:57:16 12 A That's correct.

09:57:16 13 Q I am going to begin with Exhibit Number 2962
09:58:05 14 which is -- it is out. This is already admitted into
09:58:15 15 evidence. Let me show you what has been admitted as
09:58:18 16 Exhibit 2962 and I would ask if you recognize that
09:58:26 17 particular photograph?

09:58:28 18 A Yes, I do.

09:58:29 19 Q What is that?

09:58:37 20 A This is a photograph depicting the left side of
09:58:41 21 Virginia Carol Kennedy's skull. It's missing the facial
09:58:45 22 skeleton and it has been reconstructed by me.

09:58:48 23 Q And would you tell us what you did in this
09:58:57 24 particular case to reconstruct the skull in that fashion?

09:59:01 25 A Essentially when you are doing a reconstruction,

09:59:04 1 you have all of the pieces of the skull and you use your
09:59:07 2 knowledge of the anatomy of the bones to put them back
09:59:11 3 together into a three dimensional view of what they looked
09:59:16 4 like prior to them being busted apart.

09:59:18 5 So in this particular case, I had some
09:59:23 6 portions of the skull that were relatively intact although
09:59:26 7 fractured, and then I had lots of little pieces and I had
09:59:28 8 to figure out where those little pieces went, and then I
09:59:31 9 cemented them into place using -- I usually use either
09:59:35 10 Elmer's glue or Duco cement, because you can dissolve it
09:59:40 11 if you make a mistake. I have always been afraid to use
09:59:42 12 superglue because I figured I would stick myself to the
09:59:44 13 counter and no one would ever come rescue me, so...

09:59:48 14 Q Okay. I am going to get these other photographs
09:59:55 15 out also.

09:59:56 16 Let me show you what is already admitted
10:00:02 17 into evidence as Exhibit 2963. Do you recognize what is
10:00:09 18 depicted in that particular exhibit?

10:00:11 19 A Yes, I do.

10:00:12 20 Q What is that?

10:00:12 21 A This is almost a three-quarter view of the top
10:00:15 22 left of Virginia Carol Kennedy's cranial vault. It's
10:00:19 23 missing the inferior portion of what is called the base of
10:00:22 24 the cranium and the lower jaw and the facial skeleton.

10:00:26 25 Q So when you say looking at her cranial vault, is

10:00:30 1 it from the outside looking down?

10:00:32 2 A Yes, it is.

10:00:33 3 Q Okay. And there's a number down in the corner of
10:00:37 4 that particular photograph; is that correct?

10:00:39 5 A Yes.

10:00:39 6 Q What is that number for?

10:00:41 7 A 08-0246 is the Yavapai County Medical Examiner's
10:00:46 8 number that was assigned to this case.

10:00:48 9 Q And do you keep it associated with the skull
10:00:52 10 while you have it in your possession?

10:00:53 11 A Yes, I do.

10:00:55 12 Q And what did you do to reconstruct that
10:00:59 13 particular portion of her skull?

10:01:00 14 A This portion was more intact than the previous
10:01:05 15 photograph, but the process is going to be the same for
10:01:07 16 all of the parts that you are going to show me today.

10:01:10 17 Q I would like to go ahead and start with 2963 and
10:01:17 18 put that on the overhead.

10:01:19 19 A Okay.

10:01:20 20 MR. BUTNER: May I publish, Judge?

10:01:21 21 THE COURT: Yes.

10:01:22 22 MR. BUTNER: And I would like to proceed in that
10:01:24 23 fashion if it's all right?

10:01:25 24 THE COURT: All right.

10:01:26 25 MR. BUTNER: Thank you.

10:01:27 1 Q Showing Exhibit 2963 at this point in time.

10:01:35 2 When you reconstructed this portion of the
10:02:01 3 skull, is this near the beginning of your reconstruction
10:02:05 4 process or further down the line so to speak?

10:02:08 5 A This is very near the beginning. In this
10:02:11 6 particular view, you can see that while the skull is
10:02:14 7 fractured, not all those pieces are present as separate
10:02:17 8 entities, so this particular part of the vault was
10:02:20 9 relatively intact and what I am doing here is trying to
10:02:24 10 maintain photo documentation of the process as I work my
10:02:27 11 way through it.

10:02:28 12 Q And then let's -- I want to show you what's
10:02:39 13 admitted into evidence as Exhibit Number 2965. Do you
10:02:47 14 recognize what is depicted in that particular exhibit?

10:02:49 15 A Yes, I do.

10:02:50 16 Q And what is that?

10:02:51 17 A This is the right side of Virginia Carol
10:02:53 18 Kennedy's skull from the right view. Again it's missing
10:02:57 19 the facial skeleton, but this is more of an intact version
10:03:01 20 of the reconstruction.

10:03:02 21 Q So this is further down the line in terms of the
10:03:05 22 reconstruction process?

10:03:06 23 A Yes.

10:03:09 24 Q And then lastly, let me, at this point in time,
10:03:14 25 let me show you what is admitted into evidence as Exhibit

10:03:21 1 Number 2964. Referring to this particular exhibit, could
10:03:24 2 you tell us what is depicted there?

10:03:25 3 A This is a view of the top of the skull.

10:03:32 4 Can I see the one in your hand?

10:03:34 5 Q Yes.

10:03:36 6 A Okay. This is a view of the top of the skull and
10:03:39 7 this is also at a point when the entire cranium, and just
10:03:44 8 for semantic reasons, the cranium is the part of your
10:03:48 9 skull without the jaw. When you have the jaw in place,
10:03:50 10 it's referred to as the skull. So if I mix those just by
10:03:55 11 virtue of trying to make it more easy to understand, this
10:03:58 12 is the cranium, meaning it's present without the mandible
10:04:02 13 and it is further along in the reconstruction process.

10:04:05 14 Q And in looking at this particular photograph
10:04:14 15 2964, is there a way to orient this particular photograph
10:04:17 16 in terms of front to back?

10:04:19 17 A Yes, there is.

10:04:19 18 Q How do you do that?

10:04:21 19 A Well, there's two ways you can do it. One at
10:04:24 20 the -- at the front, at the left side of the picture you
10:04:27 21 can see a little triangular shaped piece of bone extending
10:04:31 22 forward. Those are the nasal bones, so that's the nose.
10:04:34 23 And then if you don't have that, you can look at the
10:04:37 24 suture patterns which are the squiggly lines in the skull
10:04:39 25 and if you know what their configuration on the skull is,

10:04:43 1 you can orient it that way.

10:04:45 2 Q I have got to sort these out.

10:06:01 3 All right. Let's take a look at these on
10:06:08 4 the overhead at this point in time, and there's a laser
10:06:11 5 pointer right there if you need to use that to
10:06:16 6 specifically reference certain portions of the
10:06:19 7 photographs. Okay?

10:06:20 8 A Okay.

10:06:20 9 Q All right. Exhibit 2964 is what we were just
10:06:25 10 talking about; is that correct?

10:06:27 11 A Yes. This is a view of the top of the head and
10:06:31 12 the little triangular shaped bone at the front -- at the
10:06:35 13 left side of the photograph is the nose and then the
10:06:38 14 suture lines that I am referring to.

10:06:44 15 Q I think --

10:06:44 16 A Sorry. Technology geek.

10:06:46 17 So when you go across right here, there is a
10:06:49 18 suture line. This is a suture line. This is a suture
10:06:53 19 line. This is a suture that runs across the top of the
10:06:55 20 vault. It's called the coronal suture named for being a
10:06:59 21 crown, and this suture down the middle of the back of the
10:07:02 22 cranial vault is called the sagittal suture and this runs
10:07:06 23 from about the top of your head down to about the midpoint
10:07:09 24 of the back of your skull.

10:07:11 25 Q Okay. And sutures, what are -- where do the

10:07:14 1 sutures come from?

10:07:15 2 **A** The sutures are in place in children's bones.
10:07:18 3 When little kids are little, their bones are only
10:07:20 4 partially mineralized, so there's cartilage that forms a
10:07:24 5 big band between the bony parts of the suture and as
10:07:28 6 you -- well, when you're born, what that -- the sutures
10:07:31 7 allow the parts of the skull to cross over one another, so
10:07:34 8 that the baby's head can fit out the pelvic outlet.

10:07:37 9 As you age and get to be our elderly status,
10:07:41 10 the cartilage in the middle -- well, your elderly
10:07:45 11 status -- when you --

10:07:46 12 **Q** Why are you looking at me.

10:07:48 13 **A** You were handy.

10:07:49 14 The cartilage actually turns into bone and
10:07:52 15 eventually the sutures will move towards one another.
10:07:55 16 They become interdigitated -- just my favorite word --
10:07:59 17 interdigitated like a zipper and essentially they form a
10:08:03 18 very tight bond and then in some people as they age
10:08:06 19 further, those sutures will get remodeled out and this top
10:08:09 20 of the skull will be very smooth like a bowling ball.

10:08:12 21 That does not happen in everyone, but it is
10:08:14 22 one indication of age.

10:08:16 23 **Q** Okay. Now, in this particular picture, there are
10:08:20 24 obviously other lines on the skull that are not sutures.

10:08:25 25 **A** That's correct.

10:08:26 1 Q What are those?

10:08:27 2 A Those are fractures and fractures are injuries to
10:08:30 3 the bone. Breaks.

10:08:32 4 Q And in this particular photograph, would you
10:08:34 5 point out the fractures that you observed?

10:08:37 6 A There's a fracture that runs from the front part
10:08:40 7 of the skull. This is the forehead. It comes back to a
10:08:43 8 point just beyond the coronal suture and then it crosses
10:08:47 9 across the top of the head and then it moves forward.
10:08:50 10 There's a lot of fracturing on the right side of the skull
10:08:54 11 in this area. That's called comminuted meaning complex or
10:08:57 12 multiple pieces.

10:08:58 13 There's a fracture that extends from that
10:09:01 14 area across, sort of a top. The part of your skull that
10:09:07 15 bows out a little bit. There's a fracture across there.
10:09:11 16 There's another fracture across the left side on that same
10:09:14 17 part of the bone and then there's a triangular shaped
10:09:18 18 fracture that comes down to meet that, and then on the
10:09:20 19 left side, there's more comminuted fractures.

10:09:23 20 Q You pointed to a fracture that -- and I am using
10:09:30 21 the term began just because of the way the photograph is.

10:09:33 22 A Okay.

10:09:34 23 Q Please tell me if that is not the case.

10:09:36 24 But looking at the photograph, a fracture
10:09:39 25 that began in essence at the left forehead area.

10:09:43 1 **A** Yes. I believe this fracture starts in the right
10:09:46 2 eye orbit, but we would have to look at some other
10:09:50 3 pictures to see that.

10:09:51 4 **Q** In the right eye?

10:09:51 5 **A** I'm sorry. The left eye orbit.

10:09:53 6 **Q** Oh, okay.

10:09:55 7 **A** Sorry.

10:09:55 8 **Q** So it begins some place over on the left side of
10:09:58 9 the forehead?

10:09:58 10 **A** It's on the left facial skeleton, but before we
10:10:02 11 go too far, you have to be careful about interpreting
10:10:05 12 these fractures as running all the way across to here and
10:10:08 13 then to here and then to here.

10:10:10 14 It's very possible that, for an example,
10:10:13 15 where you see -- my hands are shaking -- when you see
10:10:16 16 right here, there's this junction. It's not perfect and
10:10:19 17 it makes you think that perhaps this fracture is running
10:10:22 18 up here and then this fracture was either already in place
10:10:25 19 or it came shortly thereafter and they ran into each
10:10:29 20 other.

10:10:29 21 Do you understand what I am trying to say?

10:10:31 22 **Q** I think I do. It makes you think that?

10:10:33 23 **A** Yes.

10:10:34 24 **Q** Is that correct?

10:10:34 25 **A** Yes. Makes me think that.

10:10:36 1 Q Can you tell which fracture came first?

10:10:39 2 A In some instances, you can. I believe in this
10:10:41 3 case there was only one that I was able to do that kind of
10:10:44 4 association with.

10:10:46 5 Q Okay. Did you get those? Thank you.

10:10:53 6 Let me show you what has been marked for
10:11:30 7 identification purposes as Exhibit Number 3026.

10:11:44 8 MR. SEARS: You know it might be easier, your
10:11:44 9 Honor, if I could get my copies of these photographs to
10:11:47 10 keep from him having to walk back and forth, if I could
10:11:50 11 have just a moment. Thank you, your Honor.

10:12:01 12 THE COURT: Yes.

10:12:04 13 MR. BUTNER:

10:12:04 14 Q Okay. Do you recognize that particular
10:12:08 15 photograph?

10:12:09 16 A Yes, I do.

10:12:10 17 Q When was that picture taken?

10:12:13 18 A This was taken by me during the reconstruction
10:12:16 19 process.

10:12:17 20 Q And that would be on -- when? What day?

10:12:20 21 A Between the 16th and the 28th of July. Probably
10:12:23 22 closer to the 16th.

10:12:25 23 Q And what is depicted in that particular
10:12:27 24 photograph?

10:12:28 25 A This is a photograph -- the main event of the

10:12:31 1 photograph is the cranium and you're looking at the
10:12:35 2 posterior or back view of it. So you're essentially
10:12:38 3 looking at the back of the head and then you can see some
10:12:40 4 of the tools that I use for reconstruction off to the
10:12:42 5 side.

10:12:43 6 Q Does that accurately depict the cranium at the
10:12:48 7 time that you were reconstructing Carol Kennedy's skull?

10:12:52 8 A Yes, it does.

10:12:52 9 MR. BUTNER: I would move for the admission of
10:12:54 10 Exhibit Number 3026.

10:12:59 11 MR. SEARS: No objection.

10:13:00 12 THE COURT: 3026 is admitted.

10:13:03 13 MR. BUTNER: Thank you.

10:13:05 14 Q I have placed 3026 on the overhead projector, and
10:13:17 15 would you tell us basically what is depicted in that
10:13:21 16 particular photograph?

10:13:21 17 A This is an image of the cranium of Virginia Carol
10:13:26 18 Kennedy and you are looking at her as if you were standing
10:13:28 19 behind her looking at the back of her head.

10:13:31 20 Q And those squiggly lines that are sort of in an
10:13:38 21 upside down "Y" pattern, what are those?

10:13:41 22 A This is the sagittal suture that I described
10:13:43 23 earlier and this triangular or lambdoid shaped suture is
10:13:47 24 called the lambdoidal suture and it's right on the back of
10:13:51 25 your skull.

10:13:53 1 Q And then this shows some of the fractures that
10:13:58 2 were depicted in the previous photograph coming over more
10:14:02 3 over the top of the skull?

10:14:03 4 A Yes, it does.

10:14:05 5 Q And is there anything of significance in this
10:14:10 6 photograph that got your attention, so to speak, in
10:14:13 7 reconstructing this skull?

10:14:15 8 A As I was trying to interpret -- let me backtrack
10:14:20 9 a little bit. As a forensic anthropologist, one of our
10:14:23 10 charges is to try to determine the type of trauma that was
10:14:26 11 inflicted, so in this case it's blunt force as opposed to
10:14:29 12 sharp force or gunshot.

10:14:31 13 And then also can you tell any patterns to
10:14:33 14 the injury and can you sequence the blows?

10:14:36 15 So I like to liken it to a BB gunshot at a
10:14:39 16 window. When you shoot it twice, the fractures run into
10:14:42 17 each other and intersect. If you get one that stops
10:14:45 18 because there's another fracture in place, the force is
10:14:48 19 allowed to escape through the first crack, and so
10:14:50 20 essentially you can tell that this one was before this
10:14:53 21 one, and that's the same thing that we use in a case like
10:14:57 22 this.

10:14:57 23 When I was trying to interpret those
10:15:00 24 questions for this cranium or for this skull, I was
10:15:03 25 looking at the fracture lines and the patterns and there

10:15:06 1 are certain characteristics about this one particular
10:15:09 2 fracture on the back of the skull. There's a chip.
10:15:12 3 There's a line that comes out and stops at the suture,
10:15:15 4 which makes sense because the suture acts as a release
10:15:17 5 valve for that pressure.

10:15:19 6 And then there's a trailing fracture here
10:15:22 7 and here, and unfortunately it doesn't show up very well,
10:15:26 8 but there are other little fractures around this that are
10:15:30 9 suggestive of an injury that occurred early in the event.

10:15:33 10 So that, in other words, once this
10:15:35 11 compromise -- once the integrity or the structure of the
10:15:38 12 skull is compromised, it will not react the same time
10:15:41 13 when -- the same way when you hit it or if it is impacted
10:15:45 14 in some way again.

10:15:46 15 So near the beginning, in interpreting this,
10:15:50 16 when I looked at this, it has some characteristics of an
10:15:53 17 event that occurred while the integrity of the skull was
10:15:56 18 still intact. While the structure was still intact.

10:15:59 19 Q So this is early in the attack, so to speak?

10:16:02 20 A I believe it's early in the event, yes.

10:16:05 21 Q And you were pointing with the laser pointer at
10:16:08 22 this one little area right in here a lot; isn't that
10:16:12 23 correct?

10:16:12 24 A That -- that little area is a chip of the outer
10:16:15 25 table. When you think of the bones of the skull, they are

10:16:18 1 like a dual-paned window. You have an inner pane and an
10:16:21 2 outer pane and in between is spongy bone and what that
10:16:25 3 does is provide some cushioning for the skull. It's a
10:16:29 4 protective mechanism for the brain.

10:16:31 5 So, essentially, it creates a little bit of
10:16:36 6 give, I guess, is the best way to describe it.

10:16:38 7 In this particular case, you will see many
10:16:41 8 areas where you have, what I refer to, as a chip of the
10:16:44 9 outer table, meaning that a little piece of the bone of
10:16:48 10 the outside of the skull has flaked off in response
10:16:51 11 probably to an impact of some sort.

10:16:53 12 In the case of these fractures, these
10:16:58 13 fractures are full thickness, meaning they go all the way
10:17:01 14 through the inner and outer parts of the skull, so they're
10:17:06 15 not just in the outer table. But the chips are only in
10:17:10 16 the outer table.

10:17:11 17 Q Okay. So this is a missing chip of bone from the
10:17:14 18 outer table of the skull?

10:17:16 19 A Yes.

10:17:17 20 Q And were there more than one missing chips of
10:17:21 21 bone from Carol Kennedy's skull?

10:17:23 22 A Yes.

10:17:24 23 Q We're looking at this from the rear of the skull;
10:17:30 24 is that correct?

10:17:30 25 A Yes.

10:17:31 1 Q And so this particular missing area, missing chip
10:17:37 2 is on the right side of Carol Kennedy's head; is that
10:17:41 3 correct?

10:17:41 4 A Yes.

10:17:42 5 Q And the fractures that are up in this area and
10:17:45 6 going off that way, those are basically on the right side
10:17:49 7 of her skull?

10:17:49 8 A Yes.

10:17:50 9 Q Let me show you what is marked for identification
10:18:25 10 purposes as Exhibit 3010.

10:18:40 11 A Okay.

10:18:40 12 Q Do you recognize what's depicted in that
10:18:42 13 particular exhibit?

10:18:43 14 A Yes, I do.

10:18:44 15 Q What is that?

10:18:45 16 A This is a photograph of the inside of the right
10:18:49 17 side of the skull, so now you're looking at the inner
10:18:52 18 table, not the outer table.

10:18:53 19 Q Okay. So in the photograph that's up on the
10:18:56 20 overhead, we're looking at the outside, right?

10:18:58 21 A Correct.

10:18:58 22 Q And then this particular photograph -- who took
10:19:02 23 this photograph, by the way?

10:19:03 24 A I did.

10:19:04 25 Q Okay. At on or about what date did you take it?

10:19:09 1 **A** Around the 16th, 17th of July.

10:19:12 2 **Q** Of 2008?

10:19:13 3 **A** Actually it wouldn't have been that close because
10:19:15 4 I had to macerate. So within the week of the 16th of
10:19:19 5 July.

10:19:20 6 **Q** Okay. And does it accurately depict the -- what
10:19:25 7 you described, I believe, as the inner side of the cranial
10:19:28 8 vault?

10:19:29 9 **A** Yes, it does. Of one part of the cranial vault.

10:19:33 10 MR. BUTNER: I would move for the admission of
10:19:35 11 Exhibit 3010 at this time.

10:19:39 12 MR. SEARS: No objection.

10:19:39 13 THE COURT: 3010 is admitted.

10:19:45 14 MR. BUTNER:

10:19:45 15 **Q** So placing Exhibit 3010 on the overhead, have I
10:19:55 16 got this basically oriented correctly, or should I reverse
10:19:59 17 the --

10:20:00 18 **A** No. If you can read the number, that's the way I
10:20:02 19 took the picture.

10:20:03 20 **Q** Okay. All right.

10:20:04 21 And you have some measuring implements in
10:20:09 22 this particular photograph; is that correct?

10:20:11 23 **A** I do.

10:20:12 24 **Q** And what is the purpose for having the measuring
10:20:15 25 implements there?

10:20:15 1 **A** The scale on the top that's got the right angle
10:20:20 2 is called an ABFO ruler. It's used by dentists to take
10:20:24 3 pictures of bite marks and the reason it's important is the
10:20:26 4 circles get distorted when you don't have it in the right
10:20:31 5 plane, so essentially they can blow bite marks up to one
10:20:35 6 to one and then put the mouth over the bite mark to do the
10:20:38 7 comparison and it's become a standard in forensic science
10:20:41 8 to use this ruler when you're measuring defects.

10:20:44 9 The other is the case number plate that we
10:20:48 10 use for photography in the Medical Examiner's office so
10:20:51 11 that you have the case number and some form of scale in
10:20:54 12 the photograph while you're taking the photograph.

10:20:56 13 **Q** Okay. And this particular view, if I understood
10:21:01 14 your earlier testimony, this is on the inside of the
10:21:05 15 cranial vault?

10:21:06 16 **A** That is correct.

10:21:06 17 **Q** And tell us what's of significance that is
10:21:11 18 depicted in this particular photograph?

10:21:12 19 **A** This photo is of the right side of the head of
10:21:17 20 Virginia Carol Kennedy. There's a large curvilinear
10:21:22 21 fracture on the right side of her skull and what I have
10:21:24 22 done is taken it and looked at the inside, the inner
10:21:28 23 table. Because in some situations if an implement is used
10:21:33 24 to strike a person's skull, the inside table sometimes
10:21:38 25 reflects the shape of the implement better than the

10:21:41 1 outside of the skull, in some instances.

10:21:43 2 Q And remember we were looking at that missing chip
10:21:50 3 of bone from the outside?

10:21:51 4 A Yes.

10:21:52 5 Q Is there any evidence of that in this particular
10:21:55 6 photograph?

10:21:55 7 A There is. At the left side of this injury
10:21:59 8 there's a chip of bone and the way this happens is if you
10:22:02 9 have a strike that's quick to the outside of the skull,
10:22:07 10 the inside can pop off and sometimes in gunshot wounds
10:22:11 11 especially when you shoot somebody with a bullet, the
10:22:14 12 projectile goes through the skull and it breaks out the
10:22:17 13 inner table in a very nice round bevel, but you don't see
10:22:20 14 that on the outside. The outside is a clean oval.

10:22:23 15 So that would be an example of where the
10:22:24 16 inner table fractures instead of the outer table, and it's
10:22:28 17 usually in response to a very fast, current kind of a
10:22:32 18 strike.

10:22:32 19 Q When you say fast, you're talking about then, in
10:22:35 20 essence, the velocity of the object that strikes the
10:22:39 21 skull?

10:22:39 22 A I think of it like something that's hitting very
10:22:43 23 quickly as opposed to pushing through.

10:22:47 24 Q So that particular presence of a missing chip on
10:22:52 25 the inside of the cranial vault indicated what to you

10:22:56 1 about the blow that was struck to Carol Kennedy's head?

10:23:00 2 **A** Again I thought that this particular, I would
10:23:03 3 refer to this as a patterned injury, and my feeling was
10:23:06 4 that it was early in the event.

10:23:08 5 **Q** And when you say a patterned injury, would you
10:23:15 6 use the laser pointer and describe or point out the
10:23:19 7 pattern that you observed?

10:23:21 8 **A** Okay. So this is the inner table. The pattern
10:23:27 9 is this curvilinear edge right here. When you strike a
10:23:33 10 person's skull with a hammer, say a ball-peen hammer, you
10:23:37 11 will get a round oval strike to the skull. If you use a
10:23:41 12 baseball bat, you will get something that looks a lot like
10:23:44 13 this edge right here. This particular edge is curved and
10:23:48 14 then it has a flat edge and then it's curved again, and on
10:23:52 15 the outside, it trails off.

10:23:54 16 So what -- when I first saw this, I thought
10:23:58 17 to myself, okay, everything else on the skull is -- well,
10:24:01 18 there is one other curvilinear like this, but everything
10:24:04 19 else is sort of what we refer to as unpatterned blunt
10:24:07 20 force. You can't point to it and say this kind of
10:24:09 21 implement made this pattern.

10:24:11 22 This particular defect as well as the one on
10:24:15 23 the left side of the forehead has this curvilinear shape
10:24:18 24 and it appears to be resembling a pattern of some sort of
10:24:22 25 the implement that may have been used to strike it.

10:24:24 1 Q And when you were reconstructing the skull, is
10:24:32 2 this early in the process or at what point is this?

10:24:35 3 A This is very early in the process. This is
10:24:37 4 before I have done pretty much any reconstruction.

10:24:41 5 Q Okay. And when you saw this type of patterned
10:24:46 6 injury, did you begin to formulate an opinion as to what
10:24:50 7 type of object was the instrument that caused this type of
10:24:56 8 injury?

10:24:57 9 A I did.

10:24:57 10 Q What was your initial belief at that time?

10:25:00 11 A I thought it looked an awful lot like a wood, a
10:25:03 12 golf club wood. Not an iron, but the heavier ones that
10:25:07 13 have the flat edge and then they're big and round. They
10:25:11 14 have like a round face on them. I just -- I don't know.
10:25:13 15 For whatever reason, when I first looked at it, I thought,
10:25:15 16 wow, that looks like a golf club.

10:25:17 17 Q Had you talked to Dr. Keen about the injuries
10:25:21 18 received by Carol Kennedy at all before you began your
10:25:25 19 analysis?

10:25:26 20 A No.

10:25:26 21 Q Had you even spoken with Dr. Keen about this case
10:25:29 22 before you began your analysis?

10:25:31 23 A No.

10:25:32 24 Q So that was simply your initial impression?

10:25:35 25 A Just what I thought, and I can tell you exactly

10:25:37 1 why.

10:25:37 2 Q Please do.

10:25:38 3 A This flatness on the top of this is very unusual.
10:25:43 4 It -- if you are thinking about, say, a baseball bat, the
10:25:47 5 bat, when you think about it, it has a rounded edge, but
10:25:49 6 it's more circumscribed. So you might see this little
10:25:52 7 edge right here, but then this flatness across the top
10:25:56 8 really puzzled me. I had not ever seen that before and I
10:25:59 9 have seen blunt force practically in every way you can
10:26:02 10 think of it, and I just had never seen that flatness
10:26:05 11 across the top. And when I was thinking about the hitting
10:26:08 12 surface of a golf club, that's -- that's what it looked
10:26:11 13 like to me.

10:26:12 14 Q In fact, blunt force in practically every way
10:26:15 15 that you can think about it, how many skulls have you
10:26:19 16 reconstructed? Do you have any idea?

10:26:21 17 A I don't -- between 30 and 50 probably. But I see
10:26:28 18 blunt force -- I mean our office does 6,000 plus cases a
10:26:33 19 year. I have done massive power response where we see
10:26:36 20 mass -- you know, massive blunt force. I have seen
10:26:39 21 pedestrians. I have seen hammers. I have seen crowbars.
10:26:41 22 I have seen cat paws. I have seen bats. I have seen
10:26:46 23 rocks. I have seen two by fours and this is the first
10:26:49 24 time I ever thought to myself, wow, that looks like a golf
10:26:52 25 club. It just spontaneously came to my head. That's all

10:26:55 1 I can tell you.

10:26:56 2 Q Would you point out -- I mean you have pointed
10:26:59 3 the flat part out and you pointed out that curvature on
10:27:03 4 the right side of this photograph, right? Are there other
10:27:05 5 aspects of this particular photograph that caused you to
10:27:10 6 think maybe a golf club is what caused this?

10:27:12 7 A The only reason that you think that is -- if you
10:27:17 8 had something with that curved edge on it that didn't have
10:27:19 9 anything below it, so -- I am trying to think what that
10:27:22 10 might be. A cookie cutter is a good example.

10:27:24 11 A cookie cutter has an edge and if you put
10:27:27 12 it down into the cookie, it cuts out an outline of the
10:27:30 13 cookie.

10:27:30 14 In this particular case, when you -- when we
10:27:33 15 look at this from the other side, you will see that
10:27:35 16 there's a lot of comminuted fractures here underneath the
10:27:39 17 curve of the impact. That comminution is caused by
10:27:44 18 something. It's not a void. Does that make sense?

10:27:47 19 There's something -- you have the curve of
10:27:51 20 the implement and then there's something down here that's
10:27:53 21 also impacting the skull at the same time.

10:27:56 22 Q Whereas the cookie cutter doesn't have anything?

10:27:58 23 A The cookie cutter wouldn't do that. You would
10:27:59 24 get -- the dough would push up through the middle of the
10:28:02 25 cookie and you wouldn't see that.

10:28:04 1 So to me, it's an object -- you know, if I
10:28:07 2 had to draw it for you, I would draw an object that looks
10:28:10 3 like -- somewhat like this. (Indicating.)

10:28:17 4 Q In fact, at some point in time, did you make a
10:28:29 5 drawing?

10:28:31 6 A I think I did. You are not going to show it to
10:28:36 7 them, are you.

10:28:36 8 Q I am going to show it to them, if the judge lets
10:28:39 9 me.

10:28:40 10 Let me show you what's been marked for
10:28:44 11 identification as Exhibit Number 3031. Do you recognize
10:28:54 12 what's depicted in that particular exhibit?

10:28:57 13 A Yes, I do.

10:28:58 14 Q What is that?

10:28:58 15 A These are my attempts to trace the outline of a
10:29:03 16 golf club that was submitted to me by law enforcement as
10:29:08 17 one possible implement in this case.

10:29:10 18 Q And when did you do that?

10:29:12 19 A You are testing my memory. December 7 of 2009.

10:29:21 20 Q And why was it that you traced the golf club, so
10:29:27 21 to speak?

10:29:28 22 A This implement was provided to me as a possible
10:29:32 23 implement that might have been used in this homicide, and
10:29:36 24 so what I was curious about was of all the different
10:29:39 25 shapes that are created by the head in particular, the

10:29:43 1 head and neck of the golf club, was there any shape that
10:29:46 2 resembled what I saw on the skull.

10:29:49 3 Q And so you did this tracing?

10:29:50 4 A I did.

10:29:51 5 Q Is this an accurate depiction of your diagram as
10:29:56 6 you did it on December the 7 of -- what is it?

10:30:01 7 A Nine.

10:30:02 8 Q Nine?

10:30:02 9 A Yes, it is.

10:30:04 10 MR. BUTNER: I would move for the admission of
10:30:08 11 Exhibit 3031.

10:30:09 12 MR. SEARS: No objection.

10:30:11 13 THE COURT: 3031 is admitted.

10:30:15 14 MR. BUTNER:

10:30:16 15 Q Now, I'm placing Exhibit 3031 on the overhead
10:30:21 16 projector. If you would for a moment, and we will
10:30:31 17 probably come back to this diagram, but if you would for a
10:30:34 18 moment, were you able to correlate aspects of the golf
10:30:40 19 club diagram that you prepared with what we were just
10:30:45 20 looking at, the photograph we were just looking at?

10:30:48 21 A Yes.

10:30:48 22 Q Tell us what you did to correlate?

10:30:51 23 A Okay. So in my head, the image at the top of the
10:30:56 24 this drawing labeled -- what did I call it -- metal plate.
10:31:00 25 This is the hitting surface of the golf club. This is

10:31:03 1 what I saw in my head when I first saw the injury to the
10:31:06 2 skull.

10:31:07 3 There are other profiles. This is when you
10:31:10 4 turn it over. The face is now flat to the paper and if
10:31:13 5 you trace, you get this, and this is the neck.

10:31:16 6 This is me saying I don't like that, so I
10:31:18 7 started over.

10:31:19 8 This is the bottom. When you hold the golf
10:31:22 9 club up right and trace the bottom of the club, this is
10:31:25 10 what you get.

10:31:26 11 So in my head, this is the shape that I saw
10:31:30 12 when I looked at Mrs. Kennedy's head.

10:31:33 13 Q And did you compare that -- once you prepared
10:31:37 14 this diagram, did you go back and compare it with the
10:31:40 15 photographs you had taken of Carol Kennedy's skull?

10:31:43 16 A Yes, I did.

10:31:44 17 Q And how did it compare in that regards?

10:31:47 18 A The shape is very good. The size, eight
10:31:50 19 centimeters corresponds to the size of the defect.

10:31:55 20 Interestingly, when you hold the golf club
10:31:57 21 in your hand and you use it rather than to strike a golf
10:32:01 22 club, but as a weapon, it spins in your hand and you get a
10:32:04 23 different aspect of it hitting the skull than when you
10:32:09 24 would go to hit a golf club (sic).

10:32:11 25 Q A golf ball?

10:32:12 1 A A golf ball. Yes.

10:32:15 2 Q Okay. And so did you see any indications of that

10:32:19 3 kind of rotation of the head of the club in the injuries

10:32:25 4 that you observed to the skull of Virginia Carol Kennedy?

10:32:28 5 A I'm sorry, Joe. I just went away for a minute.

10:32:32 6 Can you say that again?

10:32:33 7 Q I think I got lost in the middle of that myself.

10:32:36 8 A Sorry.

10:32:37 9 Q Try that again.

10:32:37 10 Did you see any indications -- I was asking
10:32:42 11 you about the rotation --

10:32:43 12 A Yes.

10:32:43 13 Q -- of the golf club head --

10:32:45 14 A Okay.

10:32:46 15 Q -- in connection with the injuries.

10:32:47 16 A Okay.

10:32:48 17 Q Did you see any indications in those injuries of
10:32:52 18 the rotation of the golf club as it struck the skull of
10:32:57 19 Carol Kennedy?

10:32:58 20 A I did see, when I had the golf club in my
10:33:03 21 custody, I also had a Styrofoam cooler and I thought that
10:33:06 22 if I could hit the Styrofoam cooler with the golf club,
10:33:10 23 imagining that it was someone else's head -- a few people
10:33:14 24 came to mind.

10:33:15 25 Q I bet.

10:33:16 1 **A** That I could actually see an outline of what the
10:33:18 2 hitting -- the effective surface was. So, in other words,
10:33:22 3 you might see the shape of the object, but the effective
10:33:25 4 surface is what really creates the pattern. I thought I
10:33:29 5 might see that in the cooler, in the outline of the
10:33:32 6 Styrofoam and when the golf club spins, it turns to the
10:33:36 7 back so that the weight of it is down, and that profile
10:33:40 8 did roughly match the defect on the side of the skull.

10:33:43 9 **Q** Let's go back to the previous photograph.

10:33:53 10 Okay. Now, we are looking, again just to
10:33:56 11 clarify, at the interior portion of the skull of Carol
10:34:00 12 Kennedy, right?

10:34:01 13 **A** Correct.

10:34:02 14 **Q** The cranium?

10:34:02 15 **A** The cranium. Do you have the outside view or the
10:34:06 16 external?

10:34:07 17 **Q** I do. I do. Would that be better?

10:34:09 18 **A** Well, it's easier for me to talk about it that
10:34:12 19 way.

10:34:12 20 The reason I like this photograph is because
10:34:15 21 the shape is very clear in this picture, but from the
10:34:18 22 outside, that's what -- that is what I initially saw that
10:34:23 23 reminded me of the golf club.

10:34:26 24 **Q** Let me show you what has been marked for
10:34:31 25 identification purposes as Exhibit 3027. Do you recognize

10:34:46 1 what's depicted in that particular photograph?

10:34:49 2 **A** Yes, I do.

10:34:49 3 **Q** What is that?

10:34:50 4 **A** This is a view of the right side of Carol --
10:34:53 5 Virginia Carol Kennedy's skull, cranium without the facial
10:34:57 6 skeleton and this is after I have reapproximated it into
10:35:04 7 its original three dimensional state.

10:35:06 8 That being said, there is a fracture that
10:35:09 9 bisects the skull from the middle part of it like this.
10:35:12 10 That is a little bit off. There's a gap of about maybe
10:35:16 11 two centimeters. That gap is not real? It's -- because
10:35:19 12 of the deformation in the skull, I wasn't able to push it
10:35:22 13 back into place, but essentially the outline of the
10:35:25 14 fracture is what caught my eye.

10:35:27 15 **Q** Okay. And you took this photograph during the
10:35:29 16 process of reconstructing her skull in July of 2008?

10:35:33 17 **A** Yes. This is later in the process.

10:35:36 18 MR. BUTNER: I would move for the admission of
10:35:38 19 Exhibit 3027 at this time.

10:35:39 20 MR. SEARS: No objection.

10:35:40 21 THE COURT: 3027 is admitted.

10:35:43 22 MR. BUTNER: Thank you.

10:35:44 23 **Q** Is this a good one to use?

10:35:45 24 **A** Yes.

10:35:45 25 **Q** Okay. Okay. Now, looking at Exhibit 3027 on the

10:36:04 1 overhead, tell us what you saw that was of significance
10:36:10 2 when you were comparing these injuries to the golf club
10:36:15 3 diagram?

10:36:15 4 **A** When you -- when I first saw the skull
10:36:19 5 reapproximated, or reconstructed, this -- this -- the
10:36:24 6 outline of this defect has a pattern to it. Whereas most
10:36:29 7 of the other defects on the skull are just linear
10:36:32 8 fractures, this one has a curve running into a straight
9 line.

10:36:36 10 When I saw, in particular, this curvature
10:36:39 11 right here, with this comminution in the middle or this
10:36:42 12 complex fracture in the middle, I thought of the head --
10:36:45 13 you know, the hitting surface of the golf club because it
10:36:48 14 has this flatness here and it tails off and then you have
10:36:52 15 a long line here.

10:36:54 16 When I actually used the club as a weapon,
10:36:56 17 it turns and the back side of the club would be hitting
10:37:00 18 here with the nozzle (sic) and it also has this -- this
10:37:04 19 shape to it if that makes sense to you.

10:37:07 20 **Q** Okay. So you had compared this -- then you
10:37:14 21 compared this photograph with your diagram that you
10:37:17 22 prepared at a later date?

10:37:18 23 **A** Yes.

10:37:18 24 **Q** And to clarify, this is on the right side of
10:37:27 25 Virginia Carol Kennedy's skull?

10:37:29 1 **A** This hole right here is the ear. This is called
10:37:33 2 the mastoid process. This big bump right behind your ear.
10:37:36 3 This is your cheek bone coming around. Your eye orbit is
10:37:39 4 right here.

10:37:40 5 So this is immediately above the right cheek
10:37:44 6 on the -- sort of the top side of the right side of the
10:37:48 7 skull.

10:37:49 8 **Q** And looking at this particular photograph then,
10:37:56 9 which direction would the head of the golf club be pointed
10:38:03 10 at the time of striking? Were you able to tell that?

10:38:06 11 **A** Can you be more clear? The head --
10:38:09 12 MR. SEARS: Foundation. Assumes facts in
10:38:12 13 evidence.

10:38:12 14 THE COURT: Sustained.

10:38:15 15 MR. BUTNER:

10:38:15 16 **Q** We were talking about your diagram admitted into
10:38:19 17 evidence as Exhibit 3031, right?

10:38:22 18 **A** Yes.

10:38:23 19 **Q** And you compared your diagram to this particular
10:38:26 20 photograph; is that correct?

10:38:27 21 **A** Yes.

10:38:28 22 **Q** And comparing the diagram to the photograph, did
10:38:34 23 you have the -- did you use the diagram and more or less
10:38:39 24 compare the shape of the golf club to the shape of the
10:38:41 25 injury?

10:38:42 1 **A** Yes.

10:38:42 2 **Q** Would you outline the shape of the golf club as
10:38:48 3 you saw it compared with this particular injury?

10:38:52 4 MR. SEARS: Misstates her testimony. She has not
10:38:54 5 said that's an injury from a golf club.

10:39:01 6 THE COURT: Overruled. This question will just
10:39:03 7 be viewed in terms of the prior testimony of what the
10:39:06 8 diagram is about and what the reconstruction represents,
10:39:09 9 so overruled.

10:39:11 10 MR. BUTNER:

10:39:11 11 **Q** Do you understand my question?

10:39:12 12 **A** I think so.

10:39:14 13 **Q** I am going to put your diagram back before you,
10:39:16 14 so to speak.

10:39:17 15 Can you more or less outline how the shape
10:39:20 16 of the golf club -- with the laser pointer, can you
10:39:22 17 outline how the shape of the golf club compared with the
10:39:26 18 shape of the injury?

10:39:27 19 **A** I think I understand what you're asking me. It's
10:39:39 20 easier if we go back to -- my first impression was that
10:39:42 21 this outline right here was the hitting surface of the
10:39:46 22 golf club. When I used the golf club as a weapon, it
10:39:51 23 turns in your hand so that when you're not controlling it
10:39:55 24 to hit a golf ball and you're actually using it maybe as a
10:39:59 25 club, it turns in your hand. At least it did when I used

10:40:03 1 it.

10:40:04 2 And so what ends up happening is the shaft
10:40:06 3 comes up and the nozzle -- hosel -- there's a little
10:40:12 4 triangular shaped piece that sort of connects the golf
10:40:15 5 club to the head. That piece sits to the back and the
10:40:20 6 head then would be coming out this way.

10:40:22 7 So you would see the strike here and then
10:40:25 8 the head to the right of it.

10:40:27 9 Q I see. Okay.

10:40:29 10 A So if I do that on the diagram, I think -- if you
10:40:34 11 want to argue that, this would be the shaft and the head
10:40:37 12 would be over here.

10:40:39 13 Q Okay. We could just -- I am going to put this
10:40:42 14 diagram back on the projector. So when you say -- and we
10:40:49 15 did have a kind of a golfer here earlier who testified.
10:40:54 16 He called it a hosel.

10:40:55 17 A A hosel I think. I think Dr. -- Mr. Sears -- I
10:40:58 18 just elevated you to Dr. Sears -- I think he called it
10:41:00 19 that in the interview also. The hosel.

10:41:03 20 Q If would you point to what you considered to be
10:41:06 21 the hosel of the golf club?

10:41:07 22 A This is the shaft of the golf club coming down
10:41:11 23 and see where it expands here into a little triangle, this
10:41:14 24 is actually a -- I don't know if it's really a sleeve, but
10:41:17 25 it looks like a sleeve around and it creates a larger

10:41:20 1 surface that's triangular shaped between the shaft and the
10:41:23 2 head of the golf club.

10:41:25 3 When you hold the golf club in your hand and
10:41:27 4 use it as a club, this back surface right here spins to
10:41:30 5 the back and then the head comes off this way.

10:41:34 6 Q And so then looking at the photograph, Exhibit
10:41:45 7 Number 3027, where did you see what you believe to be the
10:41:53 8 hosel area, so to speak, when you compared your diagram to
10:41:57 9 the photograph?

10:41:58 10 A There are two possibilities. One is that the
10:42:01 11 hosel would be right in this area or it could be creating
10:42:05 12 this area right here as the golf club is hitting the
10:42:10 13 skull, because you still have the rounded side here. The
10:42:13 14 curvature of the head. You have the shaft coming down
10:42:15 15 this way.

10:42:17 16 Q Okay. Let me show you what has been marked for
10:42:38 17 identification as Exhibit Number 3014. Do you recognize
10:42:56 18 what is depicted in that particular exhibit?

10:42:59 19 A Yes, I do.

10:42:59 20 Q What is that?

10:43:00 21 A This is a close-up photograph of the defect as I
10:43:03 22 first saw it before any reconstruction was done.

10:43:07 23 Q So this is very early in the process?

10:43:09 24 A Yes.

10:43:09 25 Q And who took the photograph?

10:43:11 1 A I did.

10:43:12 2 Q And this was taken during the month of July of
10:43:18 3 2008 between the 16th and --

10:43:21 4 A 28th.

10:43:22 5 Q -- and the 28th of July; is that correct?

10:43:23 6 A Yes.

10:43:24 7 Q Does it accurately depict the skull of Carol
10:43:29 8 Kennedy as you saw it at that time?

10:43:31 9 A Yes, it does.

10:43:31 10 MR. BUTNER: I would move for the admission of
10:43:33 11 Exhibit Number 30, I believe, 14.

10:43:36 12 MR. SEARS: No objection.

10:43:37 13 THE COURT: Exhibit 3014 is admitted.

10:43:40 14 MR. BUTNER: Sorry, Judge.

10:43:42 15 Q And you have got the measuring device, the ABFO
10:43:46 16 ruler in this particular diagram; is that correct?

10:43:48 17 A Yes, I do.

10:43:50 18 Q And for what purpose did you put the ruler in
10:43:52 19 this diagram?

10:43:52 20 A I was trying to -- well --

10:43:55 21 Q Photograph, I mean.

10:43:56 22 A It's a standard tool that's used whenever you
10:44:00 23 have a defect that you want to measure or photograph for
10:44:05 24 forensic science.

10:44:07 25 Q Now I have got Exhibit Number 3014 back up on the

10:44:20 1 overhead, correct?

10:44:21 2 **A** Yes.

10:44:21 3 **Q** And tell us what you noted to be of significance
10:44:29 4 when you discovered this early in the process of
10:44:32 5 reconstruction?

10:44:32 6 **A** Let me just orient first. This right here is
10:44:38 7 your brow ridge, so where it come across the forehead
10:44:42 8 right here and then this little shape is where the muscle
10:44:45 9 that you chew with comes up and attaches to the skull.

10:44:48 10 So this is just on the fore -- kind of the
10:44:52 11 right side of the skull right above the ear, as I
10:44:54 12 mentioned earlier. This is the coronal suture coming down
10:44:58 13 from the top of the skull, and what is of it interest here
10:45:01 14 is this curvilinear fracture with all of this comminution
10:45:05 15 underneath it or complex fracture underneath it. This is
10:45:08 16 the outline of the cookie cutter, but this is filled in
10:45:11 17 with something.

10:45:13 18 So the implement that I immediately thought
10:45:15 19 of was a golf club, but it just means that whatever
10:45:18 20 implement or whatever implement impacted the skull, be it
10:45:22 21 an object or the skull hitting something else, has this
10:45:26 22 curvilinear shape with some bulk underneath of it.

10:45:30 23 **Q** Now, you were looking at the interior of the
10:45:34 24 cranial vault and comparing it for purposes of deciding
10:45:39 25 what type of -- or attempting to determine what type of

10:45:43 1 weapon caused the injuries?

10:45:45 2 **A** It's not so much determining the type of weapon
10:45:47 3 as thinking to yourself the shape of the implement that
10:45:50 4 might have been involved.

10:45:52 5 It's more common for the investigation to
10:45:56 6 turn up possible items for me to include or exclude.

10:46:01 7 **Q** Is the interior better than the exterior in
10:46:06 8 trying to arrive at those kind of opinions?

10:46:11 9 **A** In some cases, the interior is a better depiction
10:46:14 10 of the outline of the object.

10:46:16 11 **Q** And why?

10:46:16 12 **A** But not always.

10:46:17 13 **Q** Why is that?

10:46:18 14 **A** It has something to do with the way the skull
10:46:20 15 fractures or the way dual panes react to the impact.
10:46:24 16 Sometimes there is so much trauma on the outside that you
10:46:27 17 lose some of the detail of the object and it's more
10:46:30 18 clearly represented on the inside. It doesn't happen in
10:46:34 19 all cases, but in some cases.

10:46:36 20 **Q** And in this particular case, what gave you a
10:46:39 21 better or more reliable in your opinion type of
10:46:44 22 impression?

10:46:45 23 **A** I thought they were very similar, but the inside
10:46:48 24 shows kind of the oval shape better because you can see
10:46:53 25 the whole thing as opposed to this one where parts of it

10:46:56 1 are missing.

10:46:57 2 Q And when you say comminution, do you see
10:47:01 3 indications on this particular photograph of comminutions
10:47:06 4 to -- comminuted injuries to the right side of Carol
10:47:08 5 Kennedy's skull?

10:47:09 6 A Yes. Comminuted means complex or multiple
10:47:12 7 pieces. So this is a piece. This is a piece. There's
10:47:14 8 two pieces missing from right here. There's a lot missing
10:47:17 9 from down here.

10:47:18 10 All of that referred together is a
10:47:20 11 comminuted fracture, which means multiple pieces.

10:47:24 12 Q Let me show you what has been marked as Exhibit
10:47:41 13 Number 3024, and for identification purposes, do you
10:47:50 14 recognize that particular photograph?

10:47:52 15 A Yes, I do.

10:47:54 16 Q Are you the person that took it?

10:47:55 17 A Yes.

10:47:55 18 Q When did you take that photograph?

10:47:57 19 A I think in the same time frame. I think we have
10:47:59 20 looked at this.

10:48:01 21 Q I am not sure we looked at --

10:48:02 22 A This one or another one. Okay.

10:48:04 23 Q Right. You and --

10:48:06 24 A They're similar, so -- yes.

10:48:08 25 Q This is similar to another?

10:48:09 1 **A** The top of the head.

10:48:10 2 **Q** Okay. And it's very similar to the previous
10:48:15 3 photograph already admitted into evidence?

10:48:16 4 **A** I think so.

10:48:18 5 **Q** So you --

10:48:18 6 **A** Talking about the nose -- sorry -- did I step on
10:48:21 7 him -- sorry.

10:48:22 8 We were talking about the nose and how the
10:48:25 9 sutures are oriented, so I think it's a very similar view.

10:48:28 10 **Q** So you don't need to use this photograph?

10:48:30 11 **A** I don't think so.

10:48:32 12 **Q** Thank you.

10:48:33 13 Let me show you what has been -- is 3030
10:49:10 14 admitted into evidence?

10:49:13 15 THE CLERK: Yes.

10:49:14 16 MR. BUTNER:

10:49:14 17 **Q** Let me show you what has been marked as Exhibit
10:49:23 18 3030. Do you recognize what's depicted in that particular
10:49:26 19 exhibit?

10:49:26 20 **A** Yes, I do.

10:49:27 21 **Q** What is that?

10:49:28 22 **A** This is an internal view of the cranial vault
10:49:30 23 with the defect that we have been discussing.

10:49:33 24 **Q** And did you take this photograph?

10:49:35 25 **A** Yes, I did.

10:49:35 1 Q And does it accurately depict the way that the
10:49:39 2 interior of the cranial vault of Carol Kennedy's skull
10:49:42 3 appeared when you were reconstructing it?

10:49:44 4 A Yes.

10:49:45 5 Q This is back in July of 2008?

10:49:47 6 A Yes.

10:49:48 7 Q There's a ruler in this particular photograph.
10:49:51 8 Are you the person that is holding it?

10:49:52 9 A Yes.

10:49:54 10 MR. BUTNER: And I would move for the admission
10:49:57 11 of Exhibit 3030 at this time.

10:49:59 12 MR. SEARS: No objection.

10:50:00 13 THE COURT: 3030 is admitted.

10:50:06 14 MR. BUTNER:

10:50:06 15 Q So 3014 is the outside view, right?

10:50:18 16 A Yes.

10:50:19 17 Q And 3030 is the inside view, correct?

10:50:25 18 A That's correct.

10:50:26 19 Q So you explained to us why you put the measuring
10:50:36 20 device in there, right?

10:50:37 21 A Yes.

10:50:37 22 Q The same reason is what exactly?

10:50:40 23 A It's a standard measuring device used when you
10:50:43 24 are trying to highlight a particular area or a particular
10:50:45 25 injury.

10:50:46 1 Q So this is the inside of the right side of Carol
10:50:51 2 Kennedy's cranium?

10:50:53 3 A Yes.

10:50:54 4 Q And if you would, using the laser pointer, would
10:50:57 5 you outline the injury or defect as you called it that you
10:51:03 6 were talking about?

10:51:04 7 A It's this curvilinear fracture and then
10:51:08 8 underneath you have this plus sign. If you think of it as
10:51:12 9 like a part of a plus, and where these fractures come
10:51:15 10 together, that's typically where the impact is.

10:51:17 11 So this would be the impact and then this is
10:51:19 12 the outline of the implement of one side of the implement.
10:51:23 13 Because this skull is curved, you may not get a good view
10:51:27 14 of what the bottom or underside of the implement is.

10:51:30 15 Q Okay. Now, there's kind of a line coming down
10:51:35 16 this direction from the curvilinear area.

10:51:39 17 A Yes.

10:51:39 18 Q Is that a fracture line there?

10:51:41 19 A Yes, it is. This and this and this missing bone
10:51:46 20 right here is part of the comminution and then underneath
10:51:50 21 here there's another impact site that is complicating the
10:51:54 22 picture on the interior or bottom part of this injury.

10:51:58 23 Q And in reconstructing Carol Kennedy's skull, did
10:52:05 24 you formulate any opinions as to whether this particular
10:52:10 25 impact was early in the attack or later in the attack?

10:52:16 1 A I thought it was earlier in the attack.

10:52:18 2 Q What caused you to form --

10:52:20 3 A In the event.

10:52:21 4 Q In the event.

10:52:22 5 What caused you to formulate that opinion?

10:52:24 6 A When you strike an object like the skull with a
10:52:31 7 heavy object, once you have lost the integrity, the
10:52:36 8 imprint of the implement is not as clearly laid down as
10:52:39 9 when the structure of the skull is intact.

10:52:42 10 So I like to think of it as an egg. If you
10:52:44 11 were to take an egg and tap it with a tiny little hammer,
10:52:47 12 you would get a tiny little hammer imprint. Once the egg
10:52:51 13 is fractured and you hit it again with a hammer, you are
10:52:53 14 not going to get that clear imprint again.

10:52:55 15 So in order to see this outline so clearly,
10:53:01 16 in my opinion, the structure of the skull would have had
10:53:03 17 to be relatively intact at that point.

10:53:06 18 Once the skull is in as many pieces as it
10:53:09 19 ended up at the end of the event, that -- you wouldn't get
10:53:13 20 that imprint again.

10:53:15 21 Q And why wouldn't you get the imprint again if
10:53:18 22 it's --

10:53:19 23 A Because --

10:53:20 24 Q -- if it's in many pieces like you said?

10:53:22 25 A Sorry.

10:53:23 1 Q That's okay.

10:53:24 2 A Because once the skull is in a hundred pieces,
10:53:29 3 it's moving around. It's very mobile. There's a lot of
10:53:31 4 flexibility.

10:53:32 5 So if you take it -- may I use this as a
10:53:36 6 prop? If you take it and you crunch it like this, when
10:53:41 7 you try to go back, then there's no resistance. The
10:53:45 8 pieces are all moving around. They move away from
10:53:48 9 whatever is being used on them or if the head is being,
10:53:53 10 you know, struck onto something else, the pieces move away
10:53:57 11 along the lines of the previous fracture. In other words,
10:54:00 12 there's a place for all this force to go.

10:54:03 13 When you have a skull that's intact, there's
10:54:06 14 no where for the force to go, so in other words, you know,
10:54:09 15 when you do this to it or when do you this to it, it
10:54:12 16 resists and you get the imprint of the object.

10:54:15 17 Q So more or less the first blow or blows are the
10:54:20 18 most likely to provide a definitive impression?

10:54:23 19 A If you remove the word definitively, I agree with
10:54:27 20 that statement.

10:54:28 21 Q I am not trying to insert things.

10:54:30 22 A I know. I know.

10:54:31 23 Q The earlier the blow, the more likely you get a
10:54:35 24 better impression?

10:54:36 25 A Get a better impression, yes.

10:54:38 1 Q Let me show you what has been marked for
10:54:46 2 identification purposes as Exhibit 3025. Do you recognize
10:54:58 3 what's depicted in that particular exhibit?

10:55:00 4 A I do.

10:55:01 5 Q What is that?

10:55:02 6 A This is the left side of Virginia Carol Kennedy's
10:55:05 7 skull -- well, cranium -- after the reconstruction is
10:55:09 8 completed to the point where it can be completed. In
10:55:12 9 other words, there's no more parts that can be added
10:55:14 10 because they don't fit back together. They're too --
10:55:18 11 they're too -- I want to say destructed, but that's
10:55:24 12 probably not the best word.

10:55:25 13 Q Too many pieces?

10:55:26 14 A Too many pieces, and they just --

10:55:27 15 Q Too small?

10:55:28 16 A And they don't fit back. Like the facial
10:55:30 17 skeleton, I was never able to get the facial skeleton to
10:55:33 18 fit back on to the cranium.

10:55:36 19 Q So this is toward the end of the reconstruction
10:55:39 20 process; is that correct?

10:55:40 21 A Yes. Yes.

10:55:41 22 Q And you took this photograph?

10:55:43 23 A I did.

10:55:44 24 Q All of those standard things and it accurately
10:55:47 25 depicts the way that her skull looked at the time when you

10:55:50 1 were reconstructing between July 16 of 2008 and July 28 of
10:55:56 2 2008?

10:55:56 3 **A** Yes.

10:55:57 4 MR. BUTNER: I would move for the admission of
10:56:00 5 Exhibit Number 3025 at this time.

10:56:03 6 MR. SEARS: No objection.

10:56:03 7 THE COURT: 3025 is admitted.

10:56:07 8 MR. SEARS: Your Honor, I think I could use a
10:56:08 9 break here if the Court's --

10:56:10 10 THE COURT: Okay. Be a good time for the morning
10:56:13 11 recess in any event.

10:56:14 12 Ladies and Gentlemen, please remember the
10:56:17 13 admonition and, Dr. Fulginiti, of course the rule
10:56:21 14 excluding witnesses has been invoked in this case. You
10:56:23 15 know what that means?

10:56:24 16 THE WITNESS: Yes, I do.

10:56:24 17 THE COURT: So we will be in recess. Please
10:56:28 18 reassemble at 11:15. Thank you.

10:56:32 19 (Recess.)

11:22:38 20 THE COURT: The record will show the presence of
11:22:42 21 the defendant, all of the attorneys and the jury.
11:22:47 22 Dr. Fulginiti is back on the witness stand and has been
11:22:49 23 sworn.

11:22:49 24 Mr. Butner.

11:22:51 25 MR. BUTNER: Thanks, Judge.

11:22:52 1 Q I was going to show an exhibit, but before we do
11:22:59 2 that, let me show you what has been marked as Exhibit 809.

11:23:10 3 Do you recognize that particular document?

11:23:11 4 A Yes, I do.

11:23:12 5 Q And what is that?

11:23:13 6 A That is the report that I created in reference to
11:23:16 7 this case.

11:23:17 8 Q And you prepared that at the conclusion of your
11:23:22 9 reconstruction of the skull?

11:23:23 10 A Yes.

11:23:24 11 Q And you submitted that to what agency?

11:23:28 12 A I submitted it to Lieutenant David Rhodes from
11:23:30 13 the Yavapai County Sheriff's office.

11:23:32 14 Q Is that a complete and accurate description and
11:23:36 15 summary of the reconstruction and investigation concerning
11:23:43 16 that reconstruction that you conducted concerning the
11:23:47 17 skull of Virginia Carol Kennedy?

11:23:49 18 A Yes, it is.

11:23:51 19 Q Does it contain your opinions concerning that
11:23:53 20 reconstruction?

11:23:53 21 A Yes, it does.

11:23:54 22 MR. BUTNER: I would move for the admission of
11:23:57 23 Exhibit Number 809.

11:23:59 24 MR. SEARS: No objection.

11:24:01 25 THE COURT: Exhibit 809 is admitted.

11:24:04 1 MR. BUTNER: Thank you.

11:24:05 2 Q Now, let's go to that last photograph that we
11:24:21 3 were looking at. We were going to look at what has been
11:24:23 4 admitted into evidence as Exhibit Number 3025.

11:24:31 5 THE BAILIFF: Lens cap.

11:24:33 6 MR. BUTNER: That would help.

11:24:36 7 Q Okay. Looking at Exhibit 3025, what is depicted
11:24:58 8 in that particular photograph?

11:24:59 9 A This is the left side of Virginia Carol Kennedy's
11:25:03 10 cranium minus the facial skeleton and minus the jaw.

11:25:07 11 Q And what stage of the reconstruction is this
11:25:12 12 particular photograph taken?

11:25:14 13 A This is late in the reconstruction. Probably as
11:25:19 14 reconstructed as I was able to get it.

11:25:22 15 Q And in looking at this particular photograph,
11:25:27 16 what did you determine to be of significance in the
11:25:30 17 photograph?

11:25:30 18 A Well, obviously there's a lot going on in this
11:25:35 19 photograph. This is the brow ridge for Virginia Carol
11:25:41 20 Kennedy. So this is the bone right above the eye orbit.
11:25:44 21 This is her forehead. The coronal suture comes down right
11:25:47 22 here. Sagittal back here and then the lambdoidal is over
11:25:50 23 here. This is the mastoid, ear canal opening, and cheek
11:25:54 24 just to orient you.

11:25:55 25 So this area is referred to as the cranial

11:25:58 1 vault and what you see here, all of these dark lines are
11:26:02 2 fracture lines. So what you see is an intensely
11:26:10 3 comminuted fractured skull. Each of these outlines is a
11:26:14 4 single piece of bone separate from the rest of the skull.

11:26:20 5 The things that are of interest in this
11:26:22 6 particular view are the number of impacts that you can
11:26:25 7 observe and then also this curvilinear fracture right
11:26:31 8 here. This sort of roughly approximates the one on the
11:26:32 9 other side of the skull.

11:26:35 10 Q Now, you say this area right here that I am
11:26:38 11 pointing at, that is the orbital area?

11:26:41 12 A It's right above the left eye, so it's the bone
11:26:44 13 that buttresses the left eye.

11:26:47 14 Q I wanted to get you to say that to orient us for
11:26:51 15 this picture.

11:26:52 16 And you said this is intensely comminuted?

11:26:57 17 A Yes. I mean it's -- I am not sure what the good
11:27:00 18 scientific word is, but essentially this side of the skull
11:27:03 19 is in many many pieces.

11:27:05 20 Q You indicated that you had done 30 to 50 skull
11:27:11 21 reconstructions. How does this reconstruction compare
11:27:15 22 with the ones that you have done in the past?

11:27:18 23 MR. SEARS: Relevance.

11:27:20 24 THE COURT: Overruled.

11:27:23 25 MR. BUTNER:

11:27:23 1 Q You may answer.

11:27:24 2 A Okay. I would say it's in the top three worst
11:27:28 3 that I have looked at.

11:27:29 4 Q And what makes it one of the three worst?

11:27:32 5 A The number of pieces. The amount of damage
11:27:37 6 that's been done to the skull, and the difficulty in
11:27:41 7 reapproximating it.

11:27:43 8 Q And when you say reapproximating it, do you mean
11:27:46 9 the difficulty in putting things back in position?

11:27:48 10 A Yes.

11:27:49 11 Q And what made it so difficult?

11:27:52 12 A The trauma actually deforms the bone, so when
11:27:58 13 you're trying to do the cross -- the jigsaw puzzle,
11:28:00 14 instead of having flat pieces that all connect nicely back
11:28:03 15 together, you might have one where the top part is peeled
11:28:06 16 up a little bit and it doesn't fit back nicely the way it
11:28:09 17 is.

11:28:09 18 You might have a fracture line where some
11:28:12 19 bone is missing, so you can't actually push it back into
11:28:15 20 the position and then the whole cranial vault has been
11:28:18 21 deformed as well. So you can't get it back to its
11:28:21 22 original state, and the more individual pieces you have,
11:28:26 23 the more room for error there is in the total
11:28:28 24 reconstruction, because each time you create a new joint,
11:28:32 25 you're adding to the whole, in terms of how much off you

11:28:39 1 are from the original. I don't know if that makes sense,
11:28:42 2 but --

11:28:43 3 Q Does the presence of -- now, you do this without
11:28:46 4 the presence of soft tissue, right?

11:28:49 5 A Correct.

11:28:49 6 Q Does the presence of soft tissue make it even
11:28:51 7 more difficult to reconstruct?

11:28:53 8 A Oh, yeah. It's nearly impossible.

11:28:55 9 Q And we had testimony earlier in the case from Dr.
11:29:02 10 Keen who was attempting to do a reconstruction and there
11:29:05 11 was still soft tissue present. Would you even attempt to
11:29:09 12 do such a thing?

11:29:10 13 A Only if for some reason there -- there were -- if
11:29:14 14 I was proscribed by the Medical Examiner they said you
11:29:18 15 can't macerate it. That would be only time I would even
11:29:21 16 attempt it and it would come along with a lot of warnings
11:29:24 17 and caveats about the quality of the reconstruction.

11:29:27 18 Q In other words, warning that you might make a
11:29:30 19 mistake or something because you couldn't get the bones
11:29:32 20 back in position?

11:29:33 21 A Correct. Or that you wouldn't be able to
11:29:35 22 actually see the injuries because of the soft tissue.

11:29:37 23 Q Looking at this particular photograph, you
11:29:42 24 indicated that, if I understood your testimony, that you
11:29:46 25 saw what appeared to be a number of impacts?

11:29:50 1 **A** And by impacts, I mean places where you can point
11:29:54 2 to, what I refer to, as a convergence of fractures.

11:29:58 3 So if we go back to your BB gun example,
11:30:00 4 when you shoot it, you get radiating fractures that come
11:30:03 5 out like this.

11:30:04 6 The point of impact is at the center of
11:30:06 7 those radiating fractures.

11:30:07 8 So, in this case, you see a number of areas
11:30:11 9 where you have converging fractures and you can begin to
11:30:15 10 get some sense of how many times the skull was impacted.

11:30:19 11 **Q** Using the laser pointer, if you would, could you
11:30:23 12 point out some of these distinct areas of impact that you
11:30:28 13 observed in this particular photograph?

11:30:30 14 **A** Okay. If we start right here above the left eye,
11:30:35 15 there's an area of convergence right here where a fracture
11:30:40 16 comes in from the side and then there's this fracture
11:30:42 17 coming down. That's one.

11:30:44 18 **Q** So pointing to your own skull, so to speak, okay,
11:30:48 19 in the area of the left eye, where did you --

11:30:50 20 **A** It's not -- the orbital rim is right -- it's
11:30:55 21 actually the bone that houses your eye. It's right above
11:30:58 22 that.

11:30:58 23 **Q** So the area right above the left eye?

11:30:59 24 **A** Right above the left eye.

11:31:01 25 **Q** There's a fracture there?

11:31:02 1 A Yes.

11:31:02 2 Q And is that -- in your opinion, is that a
11:31:04 3 distinct area of impact right up above the eye?

11:31:08 4 A Yes.

11:31:08 5 Q Okay. So there's that one and then moving from
11:31:11 6 there?

11:31:11 7 A If we go across to the ear canal as a point of
11:31:14 8 reference, this is where the Q-tip goes.

11:31:18 9 Q Right.

11:31:18 10 A If we go straight up from that, there is also a
11:31:21 11 point of impact with a little area of missing bone right
11:31:23 12 in the center and three fractures. At least three. It's
11:31:27 13 hard to tell from the photograph, but at least three
11:31:29 14 fractures coming out. That's two.

11:31:31 15 If we move up from that to a point roughly
11:31:35 16 halfway up the side of the vault, there's another area of
11:31:40 17 convergence. That's three.

11:31:43 18 If we move back from that, this area is a
11:31:46 19 little bit more difficult to interpret because we are
11:31:48 20 missing quite a lot of the outer table, but you have at
11:31:50 21 least one more right there. That's four.

11:31:53 22 If we go up from there, conservatively this
11:31:56 23 is five. It could be also six and seven, but
11:31:58 24 conservatively we will say there's one here.

11:32:02 25 Six.

11:32:03 1 You get the picture. Multiple.

11:32:06 2 Q What about, okay, what about up on top where that
11:32:11 3 "V" comes down?

11:32:12 4 A The "V" comes down right here and you have a
11:32:14 5 little bit of depressed fracture right here, so again this
11:32:17 6 could all be one event or it could -- if you were less
11:32:22 7 conservative, you could say there is one here and one
11:32:25 8 here.

11:32:25 9 But given the fact that we -- how do I want
11:32:31 10 to say this? I think, in terms of scientific evidence,
11:32:38 11 it's better to err on the side of caution, so to speak,
11:32:43 12 and be conservative because if you had a wider base to
11:32:46 13 your implement or to the object that the head is
11:32:49 14 impacting -- so, in other words, it could be something
11:32:51 15 hitting the head or the head hitting something else. If
11:32:54 16 it has a wide base to it, you could conceivably see a
11:32:57 17 larger area of convergence than you would, so instead of
11:33:03 18 dissecting it out and saying it's two, you would say it's
11:33:05 19 one.

11:33:06 20 Q I see. Okay.

11:33:09 21 And in looking at this particular
11:33:14 22 photograph, are there any indications in terms of the way
11:33:20 23 that these fractures appear in the photograph, that cause
11:33:23 24 you to formulate some sort of an opinion as to what type
11:33:26 25 of object or objects caused those fractures?

11:33:30 1 **A** The only one that gives you any kind of a pattern
11:33:35 2 is this curvilinear that is on the right side, right
11:33:41 3 behind -- it's kind of in the cheek area. If this is your
11:33:43 4 cheek bone coming across, it's just above that. You have
11:33:46 5 a little bit -- see the scalloping along the edge right
11:33:50 6 here? So you have a little bit of a curve, curve, curve,
11:33:53 7 curve, and then this curvilinear right here. That sort of
11:33:57 8 roughly looks like the other side where you might have a
11:34:00 9 hint of a pattern, but it's no where near as clear as it
11:34:03 10 is on the other side.

11:34:05 11 **Q** And you have an explanation as to why you might
11:34:09 12 not have as clear a pattern on this side as you would on
11:34:12 13 the right side?

11:34:13 14 **A** Yes.

11:34:13 15 **Q** What is that?

11:34:14 16 **A** That if the -- if my supposition is correct, that
11:34:19 17 the impact to the right side of the head was early in the
11:34:23 18 event, then the skull is compromised. It's moving. It's
11:34:27 19 not providing as much resistance to the object or item
11:34:32 20 that's it's impacting, and it cannot mimic exactly the
11:34:36 21 contour of what is being used.

11:34:39 22 **Q** And this kind of fracture, this is -- or these
11:34:44 23 kind of fractures, what are they called again?

11:34:46 24 **A** Comminuted.

11:34:47 25 **Q** And that reflects multiple pieces?

11:34:49 1 **A** Multiple pieces. So there's lots -- by the time
11:34:52 2 these fractures are in place, the skull is literally not
11:34:56 3 resisting at all at this point. It's so, I don't want to
11:35:00 4 use -- let give me a second to think of a word that --
11:35:06 5 it's compromised. It -- all these little pieces are now
11:35:10 6 moving and they're held together by soft tissue, but
11:35:15 7 they're not forming the protective barrier that they used
11:35:18 8 to form before they were compromised and so they're just
11:35:21 9 in motion constantly.

11:35:23 10 **Q** And when you say compromised, are you talking
11:35:26 11 about the structural integrity of the skull?

11:35:28 12 **A** Yes. The protective barrier that it provides for
11:35:32 13 the brain is gone at this point.

11:35:34 14 **Q** So when it's -- so when it's not compromised, it
11:35:37 15 has more strength?

11:35:39 16 **A** It has more ability to resist and therefore you
11:35:44 17 get the imprint of the object -- you can get the imprint
11:35:48 18 of the object.

11:35:48 19 **Q** And then once it has been compromised, then it
11:35:51 20 has less ability?

11:35:52 21 **A** Less ability to show that, or to reflect that is
11:35:55 22 a better way to say it.

11:35:56 23 **Q** Let me show you what has been marked as Exhibit
11:36:04 24 Number 3029. Do you recognize what is depicted in that
11:36:17 25 particular exhibit?

11:36:17 1 A Yes, I do.

11:36:18 2 Q What is that?

11:36:19 3 A This is a close-up view of the curvilinear
11:36:22 4 fracture and also the one that I was describing above the
11:36:25 5 left eye.

11:36:25 6 Q And this is a photograph that you took during the
11:36:29 7 course of your reconstruction between July the 16th and
11:36:32 8 July 28th of the year 2008?

11:36:35 9 A Yes.

11:36:36 10 Q Does it accurately depict that portion of the
11:36:41 11 skull of Carol Kennedy as of that date?

11:36:43 12 A Yes, it does.

11:36:44 13 MR. BUTNER: I would move for the admission of
11:36:46 14 Exhibit Number 3029.

11:36:49 15 MR. SEARS: No objection.

11:36:50 16 THE COURT: 3029 is admitted.

11:37:07 17 MR. BUTNER:

11:37:07 18 Q Okay. Again we have the scale in the photograph,
11:37:10 19 right?

11:37:10 20 A Yes.

11:37:11 21 Q And that scale is present for what specific
11:37:15 22 purpose?

11:37:15 23 A As a standard way to illustrate or highlight an
11:37:19 24 area of interest or a defect of interest.

11:37:22 25 Q When we were talking about the previous

11:37:25 1 photograph that was up on the overhead, you were talking
11:37:29 2 about scalloping. You used that term and I was wondering
11:37:34 3 if that is present in this particular photograph?

11:37:37 4 **A** Yes.

11:37:38 5 **Q** Would you point to what you were speaking of when
11:37:41 6 you said scalloping?

11:37:42 7 **A** When you look at the edge of this particular
11:37:44 8 defect, the total defect is curvilinear, meaning it has a
11:37:49 9 curve and it's also straight, so it's a line, but it's
11:37:53 10 curved. Within the curve, you can see these little half
11:38:00 11 circle shapes. There's one here. One here. One here.
11:38:05 12 And then maybe one here.

11:38:08 13 So what -- what you might deduce from that
11:38:12 14 is there's some sort of object that has that rounded kind
11:38:15 15 of an edge to it.

11:38:19 16 **Q** Okay. And is that part of what you used in
11:38:23 17 formulating your opinion about the type of object that
11:38:26 18 caused these injuries?

11:38:27 19 **A** Yes.

11:38:28 20 **Q** Is there anything else of significance that's
11:38:37 21 depicted in this photograph that caused you to reach your
11:38:40 22 conclusion as to what type of object caused the injuries?

11:38:44 23 **A** I think this is a better view of the injury above
11:38:48 24 the left. You can actually see the plus sign that is here
11:38:51 25 and this right here would be the point of impact and then

11:38:55 1 the fractures are radiating outward from it.

11:38:57 2 Q So what you're pointing at -- I am going to walk
11:39:01 3 in front of this for a moment -- but this -- what is this
11:39:07 4 little area right here? Right at the --

11:39:09 5 A This right here?

11:39:10 6 Q -- front part?

11:39:11 7 A Those are the nasal bones. So your nose is half
11:39:14 8 bone, half cartilage. And the hard part right close to
11:39:17 9 your skull is bone, and then it turns into cartilage.
11:39:19 10 That is what you can wiggle like in Bewitched.

11:39:23 11 Q Okay.

11:39:23 12 A So the hard part is close. That's the
11:39:25 13 orientation and then this little edge that you can kind of
11:39:28 14 make out where the bone changes color, that's the edge of
11:39:31 15 the eye orbit, and then -- so you can see rather than
11:39:34 16 being right in the edge of the orbit itself, it's up above
11:39:38 17 it. It's on the forehead.

11:39:40 18 Q And so that indicated to you a point of impact?

11:39:45 19 A Yes.

11:39:45 20 Q On the skull?

11:39:47 21 A Yes.

11:39:47 22 Q And would you point to that area again?

11:39:49 23 A Right here.

11:39:49 24 Q On your own skull.

11:39:50 25 A Oh, on me. (Indicating.)

11:39:51 1 Q Right there.

11:39:54 2 And where is the plus sign on the photograph
11:39:57 3 that you're talking about now?

11:40:02 4 And so that's the same area on the skull of
11:40:04 5 Virginia Carol Kennedy?

11:40:05 6 A Yes.

11:40:07 7 I feel like we're on Sesame Street. Point
11:40:09 8 to your nose.

11:40:11 9 Q Simon says.

11:40:13 10 All right. Now, if I understand your
11:40:18 11 testimony then, there's this area right above the left eye
11:40:23 12 where there's this fracture; is that correct?

11:40:25 13 A Yes.

11:40:26 14 Q And is that another one of those separate
11:40:28 15 distinct points of impact?

11:40:29 16 A Yes.

11:40:30 17 Q So how many does that make?

11:40:31 18 A I think we were up to seven on this side of the
11:40:35 19 skull. Six, seven.

11:40:39 20 Q Then there's a fracture line, I think, is that a
11:40:42 21 fracture line that runs straight up from that?

11:40:45 22 A Yes. Right here.

11:40:47 23 Q All right.

11:40:48 24 A That is a fracture. This is a fracture right
11:40:50 25 here.

11:40:52 1 Q Right across the top of that area?

11:40:54 2 A Sort of turning this larger triangle into a
11:40:57 3 smaller triangle.

11:40:59 4 Q And is that indicative of a point of impact up
11:41:04 5 near the top of the photograph?

11:41:05 6 A What this could be -- you see how it stops here
11:41:10 7 and here? It means that whatever -- when this particular
11:41:15 8 fracture was put into place, probably these two fractures
11:41:18 9 were already there.

11:41:20 10 So what you might surmise is that this
11:41:24 11 outline is an object.

11:41:27 12 Now, having said that, there's so much
11:41:33 13 destruction on the skull, that making those kind of
11:41:35 14 specific interpretations is more and more difficult the
11:41:39 15 more fractures you have.

11:41:41 16 So -- do you understand what I am trying to
11:41:43 17 say? If this was the only injury you had on the skull,
11:41:46 18 you would be tempted to say this was the outline of
11:41:49 19 something, but given the fact that we already have a lot
11:41:52 20 of injury and we also have a lot of lack of integrity to
11:41:58 21 the skull, lack of structure, it's less easy to be so
11:42:02 22 definitive about that particular fracture. It does not
11:42:06 23 look like there was an impact here and an impact here.
11:42:09 24 Let me put that it way. I think this fracture is
11:42:11 25 secondary to something else.

11:42:13 1 Q Now we have got numbers from the scale going
11:42:16 2 along the side of the photograph. One, two, three, four,
11:42:20 3 five. What are those increments of distance?

11:42:24 4 A A centimeter. One centimeter.

11:42:28 5 Q So --

11:42:28 6 A The smaller ones are milliliters. Ten
11:42:31 7 millimeters to a centimeter.

11:42:33 8 Q So we have got this major piece here is
11:42:37 9 approximately how many centimeters long then?

11:42:40 10 A Well, I think if you measure from this edge right
11:42:43 11 here, you would get one, two, three, four and then it goes
11:42:47 12 off, so at least five centimeters long.

11:42:51 13 Q And how many scalloping indications did you see
11:42:56 14 in that particular section of injury?

11:43:00 15 A You know, it's hard to tell, but in this view it
11:43:02 16 would seem there are at least three. I see one right
11:43:09 17 here. One right here, and then one right here.

11:43:12 18 Q Does that -- is that caused by multiple blows or
11:43:17 19 can it be caused by just one blow?

11:43:20 20 MR. SEARS: Object to the form of the question.
11:43:21 21 Assumes there were blows at all. Dr. Fulginiti uses the
11:43:25 22 term impact.

11:43:26 23 MR. BUTNER: I will withdraw that question and
11:43:27 24 use that term.

11:43:30 25 Q What does that indicate in terms of the number of

11:43:33 1 impacts, if anything?

11:43:34 2 **A** It could be interpreted either way. If you had
11:43:38 3 an object that had scalloping along the edge of it, it
11:43:41 4 could be one impact. If you had an object that had a more
11:43:46 5 circumscribed curve, it could be multiple impacts.

11:43:50 6 **Q** Let me show you what has been marked for
11:44:09 7 identification purposes as Exhibit Number 3021. Do you
11:44:21 8 recognize what's depicted in that particular exhibit?

11:44:23 9 **A** Yes, I do.

11:44:24 10 **Q** And what is that?

11:44:25 11 **A** This is Virginia Carol Kennedy's face.

11:44:29 12 **Q** The lower jaw and portion of her face?

11:44:32 13 **A** Yes. The bony portion. I should be more
11:44:34 14 specific.

11:44:35 15 **Q** Did you take this particular photograph?

11:44:37 16 **A** Yes, I did.

11:44:38 17 **Q** It was taken in the time frame on July 16th
11:44:42 18 through July 28th of the year 2008?

11:44:45 19 **A** Yes, it was.

11:44:47 20 **Q** Does it accurately depict how that portion of her
11:44:51 21 skull appeared at the time you were doing this
11:44:55 22 reconstruction?

11:44:55 23 **A** Yes, it does.

11:44:56 24 **MR. BUTNER:** I would more for the admission of
11:44:59 25 Exhibit Number 3021 at this time.

11:45:01 1 MR. SEARS: Could I have just have a moment, your
11:45:03 2 Honor?

11:45:03 3 THE COURT: Yes.

11:45:21 4 (Discussion held off the record.)

11:45:30 5 MR. SEARS: No objection.

11:45:33 6 THE COURT: 3021 is admitted.

11:45:37 7 MR. BUTNER:

11:45:40 8 Q Okay. Placing Exhibit 3021 on the overhead, did
11:46:09 9 you observe anything of significance in this portion of
11:46:13 10 Carol Kennedy's skull during your reconstruction?

11:46:16 11 A Yes.

11:46:17 12 Q What did you find to be of significance?

11:46:19 13 A There are actually several things that are of
11:46:22 14 interest in this particular view. This is a three quarter
11:46:26 15 view of the left side. This is her maxilla, her cheek
11:46:32 16 bones, and this total piece represents her facial
11:46:38 17 skeleton.

11:46:39 18 This is the mandible or the lower jaw.

11:46:42 19 The things that are of interest to me are
11:46:45 20 that the jaw itself is not fractured in any way and the
11:46:48 21 teeth are not fractured.

11:46:50 22 So obviously -- well, maybe not obviously to
11:46:54 23 you. Sorry. There's a suture that comes down right here
11:46:57 24 that separates the cheek bone from the maxilla or the face
11:47:01 25 bone. That suture is a little bit opened up. I don't

11:47:05 1 know if you can tell that from this photograph.

11:47:07 2 When you look just to the left of that, now
11:47:09 3 we're moving on to the face, there's a missing bone --
11:47:13 4 area of missing bone right here and then there is a
11:47:16 5 fracture that travels across. This is the nasal opening
11:47:19 6 right here, so there is a fracture and then up here, there
11:47:21 7 is a little fracture, and on the other side, it's a very
11:47:24 8 similar presentation.

11:47:26 9 So, the thing you have to ask yourself is
11:47:29 10 why are the teeth not fractured? Why is the jaw not
11:47:32 11 fractured and yet you have these points that would appear
11:47:35 12 to be impact points.

11:47:37 13 So there's two ways to think about that.
11:47:40 14 One is that these are blows that were situated on the
11:47:44 15 upper part of the face, not involving the teeth or the
11:47:47 16 lower jaw.

11:47:48 17 The other possibility is that the trauma
11:47:51 18 that was being laid down on the cranium somehow put
11:47:56 19 pressure on the face and caused these fractures.

11:48:01 20 I think the more likely explanation is that
11:48:03 21 there were some blows to the face.

11:48:07 22 Q Okay.

11:48:09 23 A I'm sorry. Impacts to the face.

11:48:11 24 Q Impacts to the face. So we saw, in previous
11:48:14 25 testimony, we saw a photograph of Virginia Carol Kennedy

11:48:20 1 where she had blackened eyes and what seemed to be a
11:48:24 2 fracture right between her eyes and is that evident in
11:48:29 3 this particular photograph? Not the blackened eyes,
11:48:31 4 obviously, but the fracture between her eyes?

11:48:34 5 **A** Yes.

11:48:35 6 **Q** Would you point to that area?

11:48:36 7 **A** Okay. When you're -- I think we talked a little
11:48:40 8 bit earlier how I can't get the facial skeleton to
11:48:43 9 reapproximate to the rest of the vault. Right at the top
11:48:47 10 of these ascend -- this is called the ascending ramus. It
11:48:50 11 just means a branch that is going up. There's a suture
11:48:53 12 here and there's one over here.

11:48:55 13 These are essentially the connection points
11:48:58 14 from the facial skeleton up to the cranial vault and those
11:49:01 15 have been popped off. So her face has been separated from
11:49:05 16 the rest of the vault.

11:49:06 17 The nose, the pieces of the nose should be
11:49:09 18 right here. They're not. They are missing or they're so
11:49:13 19 fractured. We saw a little piece of them on an earlier
11:49:16 20 photograph.

11:49:17 21 So the fracture that you're referring to is
11:49:19 22 right across the bridge of the nose right here. This
11:49:22 23 line. It should be connected to the cranial vault and
11:49:25 24 it's not. So there's a fracture across there.

11:49:27 25 And that would explain why you might have a

11:49:30 1 fracture that you were looking at earlier.

11:49:32 2 Q And then you were talking about those ascending
11:49:35 3 bones -- I forget the name that you used -- ascending
11:49:38 4 something bones?

11:49:38 5 A Branches.

11:49:40 6 Q Those bones, you say they were popped meaning
11:49:43 7 they were disconnected from the cranium?

11:49:45 8 A Yes. The term is diastatic fracture. That means
11:49:49 9 there is a fracture in the suture. I use the term popped
11:49:52 10 because I think people have a better way of visualizing
11:49:54 11 that. It means that when the suture is like this, it's
11:49:57 12 been pulled apart like this. So essentially on both sides
11:50:00 13 of her face, the facial skeleton is separate from the rest
11:50:04 14 of the skull.

11:50:05 15 Q So her face is --

11:50:08 16 A Right here.

11:50:09 17 Q -- is right here?

11:50:10 18 A If you push with your fingers, you can feel a
11:50:12 19 little divot. Those are your sutures, so essentially all
11:50:16 20 of this piece of her is off the rest of the vault.

11:50:20 21 Q Okay. And you indicated your opinion concerning
11:50:25 22 what type of impact caused that type of separation of the
11:50:28 23 lower part of her face from her forehead area?

11:50:32 24 A When you see people who have been traumatized in
11:50:35 25 the face, oftentimes if the blow is directly to the face,

11:50:38 1 you will have chipped teeth or if the blow comes from the
11:50:41 2 side, you will have fractures in the jaw. We don't have
11:50:44 3 either of those.

11:50:45 4 So what that tells me or what it suggests is
11:50:50 5 that the blow is higher on the face. In other words, the
11:50:54 6 mouth is not as involved.

11:50:55 7 Now, I forgot to mention one thing. There's
11:50:58 8 a particular type of fracture called a La Fort fracture.
11:51:01 9 It's named for the man that described it.

11:51:04 10 It comes across the teeth -- the top of the
11:51:08 11 teeth all the way across here and on the other side.

11:51:11 12 What this essentially does or effectively
11:51:14 13 does is take the bone that houses the teeth, and now it
11:51:18 14 separates from what we called the mid face. So the teeth
11:51:21 15 are separate. This part of the face is separate, and the
11:51:24 16 vault is separate in this case.

11:51:26 17 The impact sites are on both cheeks right
11:51:32 18 here in the front.

11:51:34 19 So, how do you interpret that? You could
11:51:36 20 interpret it that there's some kind of big object that
11:51:40 21 this thing is -- that this -- that is impacting the face
11:51:45 22 high, or individual blows. One here. One here. Or some
11:51:52 23 other form of injury. Maybe the mouth is on the ground
11:51:57 24 and the head is pushed off of it. I mean, that's a
11:52:01 25 possibility.

11:52:01 1 Q You are pointing now to the bench area, so to
11:52:05 2 speak, there of the witness stand. Can that type of
11:52:09 3 injury occur if a person's forehead is thrust down against
11:52:14 4 a sort of a stationary object with a flat surface like
11:52:18 5 that?

11:52:18 6 A I am not -- I am not certain that you would see
11:52:33 7 as much trauma as we see on this particular skull. I
11:52:37 8 think it's possible that some of the trauma was done in
11:52:42 9 that manner.

11:52:42 10 Q And is that the blunt -- the large blunt surface
11:52:47 11 that you were describing?

11:52:48 12 A Yes. I mean it could be -- it could be that the
11:52:51 13 face is down on a hard object. It can't move. In other
11:52:55 14 words, there's no -- the resistance is provided by the
11:52:58 15 hard object. The ground, the table, whatever. The wall.
11:53:02 16 It could be up against a wall.

11:53:03 17 So essentially the force is coming from the
11:53:08 18 top and so you're getting these fractures.

11:53:10 19 Now, what you would be more, I think, more
11:53:12 20 likely to see is dental fractures and the nose, because
11:53:15 21 those things protrude forward.

11:53:17 22 These -- the cheeks in most people are
11:53:20 23 protected. There's a little bit of fat there and they're
11:53:22 24 also pulled back away from the face. So they're not
11:53:25 25 sticking right out there saying, here, you know. That is

11:53:29 1 the point.

11:53:29 2 So my gut tells me that those two fractures
11:53:33 3 are the result of impacts higher up on the face.

11:53:38 4 Q And when you say those two fractures, which ones
11:53:40 5 are you talking about?

11:53:41 6 A The one -- the one on each cheek. They're kind
11:53:43 7 of mirror images of each other.

11:53:45 8 Q Would you point to them with the laser pointer
11:53:47 9 what you're speaking about?

11:53:48 10 A This -- this area right here. And there's one on
11:53:51 11 the other side that looks very similar.

11:53:54 12 Q Are those what you called the La Port or La --

11:53:57 13 A No. La Fort is lower down. La Fort actually
11:53:59 14 separates -- separates the maxilla all the way across
11:54:07 15 right here. So, in essence, this fracture travels all the
11:54:09 16 way across and these two parts -- this part and this part
11:54:13 17 are in two pieces.

11:54:14 18 Q So can the La Fort fracture -- in your opinion,
11:54:19 19 did the La Fort fracture occur at the same time as those
11:54:22 20 other fractures up above?

11:54:24 21 A It's possible.

11:54:26 22 Q And what kind of a force or impact do you believe
11:54:29 23 would cause that?

11:54:29 24 A It could be a sheering force like a side to side
11:54:33 25 motion where the top jaw is held in place and then the

11:54:36 1 face is kind of moved off of it.

11:54:38 2 More than likely it's the result of all the
11:54:41 3 other trauma that we are seeing and it's kind of, I don't
11:54:45 4 want to say a side effect, because it trivializes it, but
11:54:48 5 it's -- it's a fracture that isn't occurring in and of
11:54:53 6 itself. It's the result of another fracture.

11:54:56 7 Q And did you see indications in the previous
11:54:59 8 photographs and in your reconstruction that, in fact,
11:55:02 9 could have happened in this case?

11:55:03 10 A I think that there are tremendous number of
11:55:06 11 impacts to this skull that caused these fractures and that
11:55:10 12 trying to dissect out how many or where is very difficult.

11:55:15 13 Q How many did you think occurred at a minimum?

11:55:20 14 A My minimum number was seven, but I think that's a
11:55:23 15 very conservative number.

11:55:25 16 Q I am missing one photograph. Let me show you
11:56:02 17 what has been marked as Exhibit Number 3023.

11:56:26 18 Showing you what's been marked as Exhibit
11:56:29 19 3023, do you recognize what is depicted in that
11:56:32 20 photograph?

11:56:32 21 A Yes, I do.

11:56:33 22 Q What is that?

11:56:34 23 A This is what is called -- what is referred to as
11:56:35 24 the basal skull or the base of the cranium. It's the
11:56:38 25 bottom of the skull. In this particular photograph, again

11:56:42 1 the facial skeleton is missing, but you're essentially
11:56:45 2 looking at the bottom of the skull, if you took it from
11:56:47 3 the top and turned it over and looked at it.

11:56:49 4 Q And you took this photograph during your
11:56:51 5 reconstruction between July 16 and July 28 of 2008?

11:56:56 6 A Yes, I did.

11:56:57 7 Q Does it accurately depict the basal portion of
11:57:01 8 Carol Kennedy's skull at that time?

11:57:03 9 A Yes, it does.

11:57:04 10 MR. BUTNER: I would move for the admission of
11:57:06 11 Exhibit Number 3023.

11:57:08 12 MR. SEARS: No objection.

11:57:09 13 THE COURT: 3023 is admitted.

11:57:15 14 MR. BUTNER:

11:57:20 15 Q Placing this on the overhead.

11:57:26 16 A Can you turn it so that the big hole is on the
11:57:29 17 bottom?

11:57:30 18 Q Yes. I was going to put it to the right, but I
11:57:33 19 understand.

11:57:36 20 Okay. Looking at 3023 on the overhead, can
11:57:54 21 you tell us what's depicted in this photograph?

11:57:56 22 A This is the bottom view of Carol -- Virginia
11:58:01 23 Carol Kennedy's cranium.

11:58:04 24 Q And are you able to see evidence of the injuries
11:58:09 25 in this particular photograph?

11:58:11 1 A Yes.

11:58:12 2 Q Would you point to those for us please with the
11:58:14 3 laser pointer.

11:58:15 4 A I will just orient you first.

11:58:17 5 Q Please do.

11:58:18 6 A This what I just referred to as the big hole, its
11:58:26 7 technical name is foramen magnum, which means big hole.
11:58:32 8 The spinal cord goes into the brain right through this
11:58:35 9 hole.

11:58:35 10 These are called the condyles. That's where
11:58:38 11 your vertebral column attaches to your cranial vault.

11:58:42 12 This right here is collectively the base
11:58:46 13 cranium. These are your cheek bones coming forward and
11:58:48 14 these are the eye orbits.

11:58:50 15 Just to give you an orientation, if the
11:58:52 16 facial skeleton were in place, you would see the mouth
11:58:55 17 right about here and you would see the bottoms of the
11:58:58 18 teeth coming out of the screen towards you.

11:59:00 19 What we see in this photograph are lots of
11:59:03 20 fractures and missing bone. There's fractures through the
11:59:06 21 left eye orbit right here that we have been talking about.
11:59:09 22 You have seen it from up here, but you can see that it
11:59:11 23 also transmits through the eye orbit.

11:59:13 24 Both of the eye orbits are, what we would
11:59:16 25 say, are blown out and what that means is that --

11:59:19 1 Q If I could interrupt you for just a moment?

11:59:21 2 A Sure.

11:59:22 3 Q If you go back to the previous eye orbit, since
11:59:25 4 we are looking at this up from the bottom, right?

11:59:28 5 A Yes.

11:59:29 6 Q I should say correct.

11:59:30 7 Then that would be the left eye orbit; is
11:59:35 8 that right?

11:59:35 9 A That's right -- that's correct.

10 Q Yeah.

11:59:38 11 A Left, correct.

11:59:39 12 Q Left, correct. Thank you.

11:59:41 13 Okay. So looking at the left eye orbit, you
11:59:45 14 see -- you are pointing to, as I understood your
11:59:49 15 testimony, a fracture going through that?

11:59:52 16 A What this essentially is, the fracture is up here
11:59:55 17 on the forehead where we were, that I was pointing to
11:59:59 18 earlier, but the bone itself is actually cracked all the
12:00:03 19 way through the eye orbit. So that outer portion of the
12:00:05 20 eye orbit is present as a separate piece.

12:00:09 21 And then all of this black area is missing
12:00:12 22 bone. What that means is it's so fractured and so
12:00:15 23 comminuted that I actually could not reconstruct it.

12:00:18 24 So part of the reason for that is that those
12:00:22 25 bones that form the sort of inside of your nose where if

12:00:26 1 you have sinus issues, they're really fragile. They are
12:00:30 2 very delicate and they break very easily and they tend to
12:00:33 3 break into such tiny little pieces, that you can't -- you
12:00:36 4 can't do anything with them.

12:00:37 5 So essentially that is what you are seeing
12:00:40 6 here. This whole area.

12:00:42 7 And we call it blown out. You see it a lot
12:00:45 8 with in gunshot wounds where the gas goes into the skull
12:00:48 9 and literally just kind of exits wherever it can.

12:00:52 10 And then there is a fracture here that we
12:00:55 11 have talked about that you can see on the side of the --

12:00:59 12 Q Let's pause at this point in time.

12:01:02 13 A I am losing --

12:01:03 14 Q We're going past --

12:01:05 15 A Are we losing our focus?

12:01:07 16 Q We will come back.

12:01:08 17 A Okay.

12:01:09 18 THE COURT: Ladies and Gentlemen, we will take
12:01:10 19 the noon recess. Please remember the admonition. Please
12:01:13 20 reassemble at 1:20. We will start as soon as we can after
21 that.

12:01:18 22 Court is in recess. Thank you.

12:01:21 23 (Recess.)

13:23:17 24 ---o0o---

13:23:17 25 THE COURT: Record will show the presence of the

13:23:21 1 defendant, all of the attorneys, and the jury, and the
13:23:27 2 witness Dr. Fulginiti is back on the witness stand.

13:23:31 3 Mr. Butner, you may resume your direct
13:23:35 4 examination.

13:23:35 5 MR. BUTNER: Thank you very much, your Honor.

13:23:36 6 Q Okay. Looking again at Exhibit Number 3023 and
13:23:56 7 we were talking about the fractures that were evident in
13:24:03 8 this particular photograph; is that correct?

13:24:04 9 A Yes.

13:24:05 10 Q And you had pointed out to us the fracture of the
13:24:12 11 left or orbital bone on the skull of Carol Kennedy; is
13:24:19 12 that correct?

13:24:19 13 A Yes.

13:24:20 14 Q And would you use the laser pointer.

13:24:26 15 A Right here.

13:24:27 16 Q Point to that for us.

13:24:29 17 Okay. And then you had moved to a different
13:24:31 18 fracture at that point.

13:24:32 19 A I was just talking about the area of missing bone
13:24:35 20 in here. This would be the bottom of the nose if the nose
13:24:38 21 were present.

13:24:40 22 There's a fracture -- and what you're seeing
13:24:43 23 here are the extensions of the fractures that are on the
13:24:46 24 side of the skull coming down underneath. So it's a three
13:24:50 25 dimensional view.

13:24:51 1 There's fractures along the suture lines
13:24:53 2 here and on this side here and then along the petrous
13:24:59 3 ridge here and here.

13:24:59 4 And essentially the -- these fractures occur
13:25:04 5 when -- because the bottom of the skull is literally like
13:25:08 6 taking two things and placing them adjoining one another,
13:25:12 7 when a skull is impacted, they kind of just pull apart
13:25:16 8 like that. They're not together necessarily like the
13:25:19 9 sutures on top of the skull.

13:25:20 10 Does that make sense?

13:25:22 11 Q I think so.

13:25:22 12 A They just kind of lay along side one another.

13:25:25 13 Q I think you called the sutures on the top, was
13:25:27 14 that interdigitation?

13:25:28 15 A Yes.

13:25:29 16 Q Okay. Where they fit together?

13:25:30 17 A They zippered together.

13:25:33 18 Q Right.

13:25:33 19 A On the bottom they're more or less along side one
13:25:37 20 another.

13:25:37 21 Q But in this case what has happened in those
13:25:40 22 areas?

13:25:41 23 A They have been popped apart, pulled apart from
13:25:46 24 one another.

13:25:46 25 Q And what type of impact or impacts caused that?

13:25:50 1 **A** Lots of different things. You can see it in a
13:25:52 2 car accident. You can see it in blunt force. You can see
13:25:54 3 it in gunshot wounds.

13:25:56 4 **Q** In this particular case, what caused it?

13:25:58 5 **A** Blunt force.

13:25:59 6 **Q** And how many fractures are visible in this
13:26:02 7 particular photograph? Can you tell?

13:26:06 8 **A** Yeah. I mean I can sit here and count them.
13:26:08 9 Many. Multiple. Do you want me to count them?

13:26:12 10 **Q** Well, let's try to. Okay. Starting with the
13:26:14 11 left orbital fracture, right?

13:26:16 12 **A** This is the one we were talking about earlier.
13:26:18 13 This is all missing bone that's been fractured out.
13:26:21 14 There's one along this edge right here. There's one along
13:26:25 15 this orbit right here. There's this fracture that goes up
13:26:28 16 from the eye on to the side of the cranial vault.

13:26:32 17 **Q** So the right orbital bone was also fractured?

13:26:35 18 **A** Yes.

13:26:35 19 **Q** Could you tell where the area of impact was that
13:26:39 20 caused that fracture?

13:26:40 21 **A** This fracture leads -- leads backwards into the
13:26:46 22 curvilinear fracture that we were discussing earlier.
13:26:49 23 There's two possibilities. One is that it ran forward
13:26:52 24 from that. The other is that it's running backwards from
13:26:54 25 the facial injury.

13:26:56 1 Q And can you tell which occurred first? The
13:26:59 2 one -- the fracture that's toward the rear or the fracture
13:27:03 3 that's toward the front?

13:27:06 4 Do you understand what I am asking?

13:27:07 5 A Yeah. I think so.

6 Q Were you able to --

13:27:09 7 A I'm not sure. If you remember, on the face, we
13:27:15 8 had the fractures here and here, and then these two
13:27:18 9 fractures -- these two sutures are pulled apart. These --
13:27:22 10 this fracture on the right side of the skull is curved
13:27:25 11 like this and then it has a fracture running forward this
13:27:28 12 way.

13:27:29 13 So this fracture is what you are seeing
13:27:31 14 coming into the eye orbit, and it's possible that when the
13:27:34 15 face was impacted, that fracture was created. It's also
13:27:39 16 possible that the curvilinear fracture created that
13:27:43 17 fracture running into the orbit.

13:27:46 18 Is everybody following that?

13:27:48 19 Okay. Good.

13:27:49 20 Q So let me just superimpose a picture of the right
13:27:55 21 side of the head for you to discuss that. 3027 is the
13:28:00 22 exhibit number. And if you could point to what you were
13:28:03 23 speaking about?

13:28:04 24 A This is the curvilinear fracture. This a linear
13:28:08 25 fracture that runs from the mid-point of the impact

13:28:11 1 forward. Runs into the eye orbit.

13:28:15 2 So it can either be from this impact running
13:28:18 3 forward or it can be from an impact to the face running
13:28:21 4 backward and what's happened here is that more than likely
13:28:25 5 these two blows are separate or impacts are separate, but
13:28:29 6 they have joined up because that's the weak point along
13:28:32 7 the skull.

13:28:34 8 Q Okay. Now, going back to this view of the base
13:28:51 9 of the skull -- base of her skull, right?

13:28:53 10 A Yes.

13:28:54 11 Q Okay. Go ahead.

13:28:56 12 A This is -- don't.

13:28:57 13 Q A fracture on the right-hand side of Carol
13:29:00 14 Kennedy's head, right?

13:29:02 15 A Right.

13:29:02 16 So right here is the cheek bone. You can
13:29:05 17 just see the edge of the cheek bone coming forward. There
13:29:08 18 is a little fracture right there. There is also that
13:29:10 19 suture, and then there's a little fracture running along
13:29:13 20 this edge right here. And this bone is actually pulled
13:29:16 21 outward, and the reason for that is that it's been -- it's
13:29:20 22 either the bone is deformed or the bone underlying it, so
13:29:23 23 you can't reapproximate them because the trauma has
13:29:27 24 deformed the bone.

13:29:28 25 So it's offset a little bit. If you look at

13:29:30 1 this side, this one is laying a little bit nicer into its
13:29:34 2 position and this one is pulled out a little bit.

13:29:36 3 Q Does that deformity of the bone in that area
13:29:39 4 indicate the type of impact in terms of force?

13:29:44 5 A No. It's just another supporting evidence for
13:29:48 6 blunt force.

13:29:49 7 Q I see. Okay.

13:29:50 8 So how many fractures have we gotten to at
13:29:53 9 that point?

13:29:53 10 A We are on six.

13:29:58 11 Q And how many impacts have you seen that are
13:30:02 12 connected with those fractures, if you can tell us?

13:30:05 13 A I think in some respects, I won't say it's a
13:30:16 14 misleading question, but it's not quite right. Not quite
13:30:20 15 correct.

13:30:21 16 Q Can you tell --

13:30:22 17 A I can tell you that there's an impact right here
13:30:25 18 on the left orbit.

13:30:26 19 There's an impact here, but whether it's
13:30:29 20 down here on the face or up on the vault is hard to say.
13:30:34 21 All of these fractures are probably due to what's
13:30:38 22 happening up on the vault.

13:30:40 23 So they're collateral fractures.

13:30:43 24 Q Okay.

13:30:44 25 A So I don't think -- I don't think necessarily

13:30:46 1 you're seeing impacts to this surface. You are seeing the
13:30:49 2 result of impacts on other surfaces.

13:30:51 3 Q Okay. Thank you.

13:30:53 4 A Yeah.

13:30:53 5 Q Okay. So moving from the left side where the
13:30:59 6 deformity of bone existed?

13:31:00 7 A So then you have a fracture that is running --
13:31:02 8 probably the continuation of this fracture on the right --
13:31:06 9 left -- right cheek.

13:31:08 10 Q Does that run down into the base of the skull?

13:31:10 11 A Yes.

13:31:11 12 Q Is that what is referred to as a basilar skull
13:31:14 13 fracture?

13:31:14 14 A It can be. Any -- any fracture that is at the
13:31:17 15 base of the skull could be a basilar skull fracture.
13:31:20 16 Often times when medical examiners use that term, they
13:31:22 17 mean across the bottom of the skull, like a hinge
13:31:26 18 fracture.

13:31:27 19 Then there's -- these are the petrous
13:31:29 20 ridges. That is what houses your ear canal and those are
13:31:33 21 the places where the bone lies up against one another and
13:31:36 22 those are pulled apart.

13:31:37 23 Now, that is just collateral damage from the
13:31:40 24 damage to the rest of the skull.

13:31:42 25 Q And --

13:31:46 1 **A** So if we continue on from there, we are like at
13:31:49 2 seven or eight. We come over there. There's nine. Ten.
13:31:52 3 Eleven. Maybe 12 fractures of the basilar skull.

13:31:59 4 **Q** The number of fractures, is that one of the
13:32:03 5 factors that caused you to make a determination that this
13:32:06 6 was one of the worst three that you had seen?

13:32:09 7 **A** It's really more about the amount of damage and
13:32:12 8 the number of pieces.

13:32:14 9 **Q** Let me show you what has been marked as Exhibit
13:32:23 10 Number 3028. Do you recognize what is depicted in that
13:32:35 11 particular photograph?

13:32:36 12 **A** Yes, I do.

13:32:37 13 **Q** What is that?

13:32:37 14 **A** Is it admitted?

13:32:41 15 **Q** Not yet. So you have to keep it down from the
13:32:44 16 jury.

13:32:44 17 **A** I have to tell you. Oh, right. I lost track of
13:32:46 18 the sequence. Sorry.

13:32:47 19 Okay. So this is a photograph that I took
13:32:51 20 of the unreconstructable bone fragments that were
13:32:55 21 remaining after I did the reconstruction.

13:32:58 22 **Q** So you took this at basically the end of your
13:33:00 23 reconstruction process?

13:33:02 24 **A** I took one at the beginning and then one at the
13:33:04 25 end, yes.

13:33:06 1 Q And does its accurately depict the number of
13:33:08 2 fragments you were unable to put back in place so to
13:33:11 3 speak?

13:33:12 4 A Yes.

13:33:12 5 MR. BUTNER: I would move for the admission of
13:33:15 6 Exhibit Number 3028 at this time.

13:33:18 7 MR. SEARS: No objection.

13:33:19 8 THE COURT: 3028 is admitted.

13:33:31 9 MR. BUTNER:

13:33:32 10 Q And approximately how many fragments or pieces of
13:33:37 11 bone were left over?

13:33:40 12 A A couple hundred.

13:33:43 13 Q Had you made efforts to put these back in place?

13:33:50 14 A For these fragments, no. I look at all of them
13:33:53 15 to see if there is any kind of anatomical or morphological
13:33:56 16 structure that I recognize and sometimes you can pick out
13:33:59 17 the nasal bones or some other little fragment that you
13:34:02 18 recognize, but in terms of their utility in the
13:34:06 19 reconstruction, they're not that helpful, because they
13:34:08 20 mostly come from the sinuses and those are very fragile
13:34:13 21 structures.

13:34:14 22 Q So these are the areas of the sinus bones in the
13:34:17 23 face and then that large gaping area that we were just
13:34:22 24 looking at from the base of the skull where the pieces
13:34:25 25 were no longer there and couldn't be put back in place?

13:34:28 1 **A** Yes. And also from the chips of the outer table
13:34:30 2 that we looked at earlier.

13:34:32 3 **Q** And the outer table being those pieces out on the
13:34:35 4 side of the skull, the cranium area from each side?

13:34:38 5 **A** Yes.

13:34:39 6 **Q** Let me show you what has been marked as Exhibit
13:34:46 7 3008. Do you recognize what's depicted in that particular
13:34:59 8 exhibit?

13:34:59 9 **A** Yes, I do.

13:35:00 10 **Q** What is that?

13:35:01 11 **A** This is Virginia Carol Kennedy's skull prior --
13:35:05 12 after the maceration process, prior to the reconstruction
13:35:08 13 process.

13:35:09 14 **Q** So this is how you began the process?

13:35:11 15 **A** Yes.

13:35:11 16 **Q** With these pieces?

13:35:12 17 **A** Yes.

13:35:14 18 **Q** And you took this photograph?

13:35:15 19 **A** Yes, I did.

13:35:16 20 **Q** This is as it appeared on July the 16th of 2008?

13:35:20 21 **A** It would have been a few days later because the
13:35:22 22 maceration process takes time, I guess.

13:35:25 23 MR. BUTNER: I would move for the admission of
13:35:28 24 Exhibit 3008.

13:35:28 25 MR. SEARS: No objection.

13:35:30 1 THE COURT: 3008 is admitted.

13:35:34 2 MR. BUTNER:

13:35:37 3 Q So if I understand your testimony, you began at
13:35:53 4 this point with the reconstruction after you had --

13:35:57 5 A Macerated.

13:35:58 6 Q -- macerated the skull; is that correct?

13:36:01 7 A That's correct.

13:36:02 8 Q And then you began putting all of these pieces
13:36:06 9 back into place?

13:36:07 10 A Yes.

13:36:07 11 Q In addition to the diagram of the golf club, did
13:36:27 12 you prepare any other diagrams in connection with this
13:36:29 13 case?

13:36:29 14 A Yes, I did.

13:36:30 15 Q How did that come about?

13:36:33 16 A During the defense interview I was asked about
13:36:36 17 the six views of the cranium and Mr. Sears asked me if I
13:36:40 18 could produce those six views from my photographs.

13:36:44 19 Q By way of diagram?

13:36:45 20 A By way of diagram.

13:36:47 21 Q And did you do that?

13:36:48 22 A Yes, I did.

13:36:48 23 Q The way this was put together, all of the
13:36:53 24 diagrams were put together including the diagram of the
13:36:56 25 golf club, but let me show you what has been marked as

13:37:04 1 exhibit 810. Could you take a look at that, please.

13:37:16 2 **A** Okay.

13:37:16 3 **Q** Is that all of the diagrams that you have
13:37:20 4 prepared in connection with this particular case and the
13:37:23 5 reconstruction of Carol Kennedy's skull?

13:37:26 6 **A** Yes, it is.

13:37:27 7 **MR. BUTNER:** I would move for the admission of
13:37:30 8 Exhibit 810 at this time.

13:37:31 9 **MR. SEARS:** Can I see it one more time?

13:37:33 10 **THE COURT:** Yes.

13:37:39 11 **MR. SEARS:** No objection.

13:37:42 12 **THE COURT:** Exhibit 810 is admitted.

13:37:45 13 **MR. BUTNER:**

13:37:45 14 **Q** And just briefly going through these diagrams,
13:37:53 15 let me show you what's admitted into evidence as Exhibit
13:38:03 16 810. The second page. Is that -- get out of the way --
13:38:21 17 is that the diagram you prepared in connection with the
13:38:25 18 reconstruction of the right side view of Carol Kennedy's
13:38:29 19 skull?

13:38:29 20 **A** It's a copy of the diagram, yes.

13:38:31 21 **Q** And does this accurately reflect the damage and
13:38:38 22 fractures that you observed in that process?

13:38:41 23 **A** It's a drawing of the fractures, so, yes, it's an
13:38:47 24 accurate depiction. Is it a hundred percent true to the
13:38:51 25 actual damage, I don't know that I could say that. But,

13:38:54 1 yes, it's a -- it's a diagrammatic representation of the
13:39:02 2 skull.

13:39:02 3 Q Depending upon your skill of drawing?

13:39:05 4 A Correct, which is pretty lame.

13:39:09 5 Q What do you prefer as best evidence of the damage
13:39:13 6 to Virginia Carol Kennedy's skull?

13:39:15 7 A The first evidence is the skull itself and then
13:39:19 8 the next best would be the photographs of the skull.

13:39:22 9 Q And then in the hierarchy, this is --

13:39:24 10 A This is pretty far down.

13:39:27 11 Q Okay. You don't claim to be an artist?

13:39:31 12 A No, I do not. I can draw stick people pretty
13:39:34 13 well, but...

13:39:36 14 Q All right. And the other pictures and I will
13:39:40 15 just put them on rather quickly, you did those in the same
13:39:46 16 fashion; is that correct?

13:39:47 17 A Yes, it is.

13:39:48 18 Q Here is the left side view; is that right?

13:39:51 19 A Yes.

13:39:52 20 Q And then this one is really faint. This is the
13:40:10 21 frontal view; is that correct?

13:40:12 22 A Yes. And actually there you can see kind of the
13:40:18 23 total -- totality of it altogether in one place as opposed
13:40:22 24 to the -- in the photographs where they're separated. The
13:40:25 25 face from the cranial vault is what I am trying to say.

13:40:28 1 Q Okay. And then this one is labeled a posterior
13:40:53 2 view; is that correct?

13:40:56 3 A Yes, it is.

13:40:57 4 Q Do you recognize it?

13:40:57 5 A Yes, I do. Yes. That's the back of the skull,
13:41:00 6 so the squiggly lines represent the sutures and the red
13:41:03 7 lines represent the fracture. The blue is the chip.

13:41:21 8 This is the base and cranial view that we
13:41:23 9 were just looking at. It's upside down when we looking at
13:41:26 10 it, but that is what that is. The blue represents the
13:41:29 11 missing bone. The dark color is the outline of the skull
13:41:33 12 with the normal anatomical features and then hopefully in
13:41:37 13 the drawing it's a little more obvious the red are the
13:41:40 14 places where the bone is fractured.

13:41:46 15 Q When you were talking about these fractures, you
13:41:52 16 went through a list of potential weapons that you had
13:41:55 17 considered, is that correct, in terms of whether the
13:41:59 18 fractures were consistent with various types of weapons?

13:42:02 19 A I think that is one of the things that I always
13:42:04 20 think about when I do this.

13:42:05 21 Q Okay. And I remember you mentioned at one point
13:42:11 22 a crowbar?

13:42:11 23 A Yes.

13:42:12 24 Q And were these fractures consistent with the
13:42:15 25 usage of a crowbar?

13:42:16 1 **A** Some of them.

13:42:17 2 MR. SEARS: Question. Which fractures?

13:42:20 3 THE COURT: I think the answer was going to
13:42:22 4 actually possibly make that distinction, but I will
13:42:28 5 sustain and ask Mr. Butner to rephrase the question.

13:42:32 6 MR. BUTNER:

13:42:32 7 **Q** Were there -- well, let's start with the
13:42:35 8 fractures on the right side of the head. Were the
13:42:38 9 fractures on the right side of the head in your opinion
13:42:42 10 consistent with a crowbar being used as the instrument
13:42:47 11 that caused the impacts?

13:42:49 12 **A** Are you referring to the curvilinear fracture?

13:42:53 13 **Q** Correct.

13:42:53 14 **A** If you looked at the part of the crowbar where
13:42:55 15 the curve is, where it comes up around into the prongs,
13:42:59 16 then you would have to look at the dimension of that curve
13:43:03 17 and also the length of the curve. And then if you go back
13:43:08 18 to the cookie cutter analogy, there is no mass underneath
13:43:13 19 that curve. It's just a bar, right? Am I picturing the
13:43:17 20 right weapon? Let's start with that.

13:43:19 21 **Q** I think I understand what you're saying.

13:43:20 22 **A** Okay. So essentially you have the cookie cutter.
13:43:23 23 The bar comes up and makes the curve, but there is no mass
13:43:26 24 in here.

13:43:27 25 So unless it was on its flat end like this

13:43:30 1 and you were hitting like this, you might get some of the
13:43:33 2 comminuted fractures that way, but you would lose the
13:43:35 3 curve.

13:43:36 4 So it would have to be on its side like
13:43:38 5 this, and then you lose the curvilinear part -- I mean the
13:43:42 6 comminuted fractures that are underneath it.

13:43:46 7 So, in a general sense, you would say no,
13:43:48 8 it's not consistent. Can you rule it out? No, you can't.

13:43:52 9 Q Were there other potential weapons that you
13:43:57 10 considered besides the crowbar?

13:43:59 11 A Yes. I tried to think of anything that would
13:44:02 12 have that particular shape. I think the things that I
13:44:04 13 came up with that I liked the best would be river rock and
13:44:08 14 the reason I thought of river rock is because it's smooth.
13:44:11 15 It has no contour to it. It has -- it could have that
13:44:16 16 curved shape to it.

13:44:18 17 The problem is when you pick up a river
13:44:20 18 rock, then your hands become part of the weapon because
13:44:22 19 you have to hold it. You can't really retract your
13:44:25 20 fingers enough to get enough weight.

13:44:27 21 So I was trying to picture how you would
13:44:29 22 manage that if you were using a river rock just as an
13:44:32 23 example.

13:44:32 24 So the weight is good. The heft of the
13:44:36 25 object is good. The curvature would be correct. It's

13:44:39 1 the -- it's the managing of the weapon itself, I couldn't
13:44:43 2 make that work.

13:44:44 3 Q And what other potential weapons -- what about a
13:44:53 4 straight like piece of rebar? Straight rod of rebar?

13:44:57 5 A I think rebar is too narrow and it probably
13:45:01 6 doesn't have enough weight unless you get a really heavy
13:45:04 7 piece of rebar.

13:45:05 8 One of the things about this particular set
13:45:09 9 of injuries is that I think that the implement that was
13:45:13 10 used has a certain amount of heft to it, a certain amount
13:45:17 11 of mass to it, to have created this amount of damage.

13:45:22 12 MR. SEARS: Could I have a point of
13:45:23 13 clarification? Would the witness be asked if she's still
13:45:25 14 talking about that single eight centimeter curvilinear
13:45:29 15 fracture on the right side of the head and no other
13:45:31 16 injuries?

13:45:33 17 THE COURT: Mr. Butner.

13:45:34 18 MR. BUTNER: I will try and clear that up.

13:45:36 19 Q We have just been discussing basically for the
13:45:38 20 most part the right side curvilinear fracture; is that
13:45:43 21 correct?

13:45:43 22 A Yes.

13:45:43 23 Q What about going to the left side? What about
13:45:47 24 the fractures on that side? Were you able to kind of take
13:45:52 25 a look at various weapons and determine whether they would

13:45:54 1 be appropriate or not?

13:45:56 2 **A** Can we just pause for a moment. In the rebar
13:46:00 3 question, the answer would be rebar doesn't fit the
13:46:02 4 curvilinear unless it was bent.

13:46:04 5 Does that answer your question?

13:46:06 6 MR. SEARS: Thank you.

13:46:07 7 THE WITNESS: Okay. On the left side of the
13:46:09 8 skull, the fractures are more linear. They tend to run
13:46:11 9 along the lines of strength in the skull, so rebar is a
13:46:15 10 possibility as long as it was heavy enough to create those
13:46:18 11 injuries.

13:46:19 12 MR. BUTNER:

13:46:20 13 **Q** Was there -- I thought you testified there was --
13:46:25 14 a curvilinear type of fracture on the left side of the
13:46:28 15 skull also though?

13:46:28 16 **A** Yes. And rebar would not be consistent with
13:46:32 17 that.

13:46:32 18 **Q** Did you come up with any other weapons to
13:46:41 19 consider as a possible instrument that caused this?

13:46:44 20 **A** I thought about things like baseball bats,
13:46:47 21 because they're round. I thought about mallets. You
13:46:52 22 know, like particularly, not a metal mallet, but like the
13:46:56 23 rubber kind that have a little give to them. I thought
13:46:59 24 about that.

13:47:00 25 The thing with those is that I have picked

13:47:02 1 them up and they're pretty heavy, so, you know, you would
13:47:05 2 have to take into account the weight of the object itself
13:47:10 3 and I think that the damage here is, while it's extensive,
13:47:14 4 it's not crushing the way you would see if it was an axe
13:47:17 5 or a maul or something like that that was really heavy.

13:47:20 6 The handle of a hammer sometimes has a
13:47:25 7 rounded edge on it, so literally I was thinking about
13:47:27 8 anything that might have a curve to it, and in most
13:47:31 9 instances, I was either able to say, well, it could be
13:47:35 10 consistent, but I always came up with something that
13:47:38 11 didn't -- that I didn't like about it.

13:47:40 12 Q You mentioned the handle of a maul. What if the
13:47:44 13 handle were separated from the maul head, so to speak, and
13:47:48 14 the perpetrator of these impacts used only the maul
13:47:52 15 handle?

13:47:54 16 A That would be a possibility depending on the
13:47:56 17 weight of the handle. If it had, you know, a good weight
13:47:59 18 to it, you could do some of these injuries.

13:48:02 19 The curved ones especially and linear
13:48:05 20 ones -- I mean any kind of a heavy object could have
13:48:07 21 created those other linear injuries.

13:48:10 22 Q So referring to the injury to the right side of
13:48:14 23 the skull with the curvilinear aspect to it and then the
13:48:18 24 aspect of the fracture that came straight down from that
13:48:21 25 particular injury, does that equate with the maul handle?

13:48:26 1 **A** In my mind, the maul handle is more narrowly -- I
13:48:36 2 mean when I picture that, what I am picturing is one that
13:48:39 3 comes up and it's about that big around. If you had one
13:48:44 4 that was eight centimeters across that had a curve that
13:48:47 5 matched that arc, then possibly. You would expect to see
13:48:51 6 maybe some more damage down here underneath, particularly
13:48:54 7 because now instead of talking about two separate things,
13:48:58 8 you're talking about a whole bar and that whole bar
13:49:01 9 theoretically could be impacting the skull simultaneously.
13:49:05 10 You might expect to see more damage.

13:49:07 11 **Q** Because you don't have a narrow shaft you mean,
13:49:09 12 but you have rather this broad --

13:49:12 13 **A** It's just wider across, so you would expect to
13:49:15 14 see a less of a pattern. I think more damage, less
13:49:19 15 pattern.

13:49:19 16 **Q** Having gone through the analysis of various
13:49:21 17 weapons, what did you conclude in your opinion was the
13:49:25 18 most likely instrument that caused these impacts?

13:49:29 19 **A** I would --

13:49:29 20 MR. SEARS: Excuse me. Sorry. I'm now lost.
13:49:31 21 Foundation for that question. Again we are talking about
13:49:33 22 these impacts. I am just not at all clear which injuries
13:49:37 23 we're still talking about.

13:49:39 24 THE COURT: Mr. Butner, as to the question, are
13:49:42 25 you talking about the curvilinear or -- specify your

13:49:45 1 question.

13:49:45 2 MR. BUTNER: I will back up and try to be more
13:49:46 3 specific, Judge.

13:49:47 4 MR. SEARS: Thank you, your Honor.

13:49:48 5 MR. BUTNER:

13:49:48 6 Q So, first of all, let's just talk about the
13:49:51 7 curvilinear fractures and that's basically what we are
13:49:54 8 talking about at this point in time; is that correct?

13:49:55 9 A Yes.

13:49:56 10 Q Okay. There's the right side curvilinear
13:49:58 11 fracture and there's also a left side curvilinear
13:50:01 12 fracture; is that right?

13:50:01 13 A Yes.

13:50:02 14 Q In regards to the curvilinear fractures, and
13:50:05 15 having gone through this analysis of potential types of
13:50:09 16 instruments that could have caused those impacts, what did
13:50:14 17 you conclude was the most likely instrument to cause those
13:50:17 18 impacts?

13:50:18 19 A I don't like to think in terms of most likely to
13:50:21 20 cause. I like to think in terms of cannot be ruled out.
13:50:24 21 So I think it would be easier if you asked me to rule
13:50:27 22 things out.

13:50:27 23 Q So did you find -- did you find any instruments
13:50:31 24 in your analysis that you could not rule out?

13:50:35 25 A Any -- any -- well, first of all, a golf club, a

13:50:41 1 wood in particular cannot be ruled out. Any implement
13:50:45 2 that has a curvilinear shape to it with maybe a line. It
13:50:50 3 has to have some mass under the curve. Any object that
13:50:53 4 you could describe to me that looks like that. It could
13:50:55 5 even be a homemade implement of some sort.

13:50:58 6 It has to match that shape is what I am
13:51:02 7 trying to say. So anything like that that you would say
13:51:05 8 what about this? What about this?

13:51:06 9 The common things, a two by four, baseball
13:51:10 10 bat, rebar, I have mostly ruled all of those out. If you
13:51:17 11 ask me a hundred percent or, you know, 80 percent, I would
13:51:20 12 say no, but for the most part they're ruled out.

13:51:24 13 Q Thank you, Dr. Fulginiti.

13:51:29 14 I don't have any further questions at this
13:51:31 15 time.

13:51:31 16 A You're welcome.

13:51:32 17 THE COURT: Thank you, Counsel.

13:51:34 18 MR. SEARS: If we could turn the projector off
13:51:36 19 and take the screen down please before I begin.

13:51:39 20 THE COURT: Mr. King will help with that. Sure.

13:51:42 21 MR. SEARS: Thank you, your Honor.

13:53:01 22 Ready whenever you are.

13:53:02 23 THE COURT: Okay.

13:53:03 24 CROSS-EXAMINATION

13:53:03 25 MR. SEARS: Thank you.

13:53:04 1 Q Good afternoon, Doctor.

13:53:05 2 A Good afternoon, Mr. Sears.

13:53:06 3 Q Nice to see you again.

13:53:08 4 You are here as a scientist; is that right?

13:53:13 5 A Yes.

13:53:14 6 Q You are not here because you are an employee of

13:53:17 7 the prosecution in this case, correct?

13:53:20 8 A How do you define employee?

13:53:22 9 Q I understand you have been paid for your work

13:53:25 10 here.

13:53:25 11 A Yes.

13:53:25 12 Q But if your opinions did not match up with the

13:53:28 13 opinions of the prosecution, you would not change or shade

13:53:32 14 your opinions simply because you were being paid by them,

13:53:34 15 would you?

13:53:35 16 A No.

13:53:35 17 Q That's not science, is it?

13:53:36 18 A No.

13:53:37 19 Q There's a name for that profession.

13:53:38 20 A Yes, there is. It's not very polite.

13:53:41 21 Q And you told us in great detail about your

13:53:43 22 training and your experience. You studied under a very

13:53:46 23 renowned forensic anthropologist professor at the

13:53:50 24 University of Arizona, right?

13:53:50 25 A Yes, I did.

13:53:51 1 Q His name was?

13:53:52 2 A Dr. Walter Birkby.

13:53:53 3 Q And Dr. Birkby was considered for many years one
13:53:56 4 of the leading, if not the leading forensic
13:53:59 5 anthropologist, certainly in the Western United States,
13:54:01 6 correct?

13:54:01 7 A Yes.

13:54:01 8 Q And he was a great proponent of drawing, mapping
13:54:08 9 injuries on skulls, correct?

13:54:09 10 A Yes.

13:54:09 11 Q And those of you that studied under Dr. Birkby
13:54:14 12 spent many hours drawing on those six view charts, right?

13:54:20 13 A Yes.

13:54:20 14 Q But as soon as digital photography became
13:54:23 15 available, my understanding is that you felt that was an
13:54:27 16 equally satisfactory way to document injuries,
13:54:30 17 particularly if drawing is not your strong suit, correct?

13:54:32 18 A One of the differences between myself and
13:54:34 19 Dr. Birkby is that he is a phenomenal artist and he could
13:54:37 20 freehand the drawings. So, yes, I rely on photography
13:54:42 21 much more and I also just think it's a more accurate
13:54:45 22 representation and in court, one of the things that he did
13:54:49 23 not face that we face -- I'm sorry -- that he faced that
13:54:52 24 we did not was the nature of the photographs. So we have
13:54:55 25 more leeway than he did in his day.

13:54:58 1 Q Right. Now, in this particular case, let's go
13:55:02 2 back, if we could, to the beginning of your work. You
13:55:05 3 said that apparently -- and do you have some chain of
13:55:08 4 custody records with you here today?

13:55:09 5 A I do.

13:55:10 6 Q If you need to look at those to answer these
13:55:12 7 questions, please go right ahead and just tell me when you
13:55:14 8 need to do that.

13:55:15 9 My understanding is that the body of this
13:55:18 10 lady was delivered to what they called the Forensic
13:55:23 11 Science Center, Medical Examiner's Office in downtown
13:55:26 12 Phoenix on July 8 of 2008; is that right?

13:55:28 13 A Yes.

13:55:29 14 Q And you had not been alerted in advance that it
13:55:31 15 was going to be delivered that day; is that right?

13:55:33 16 A I was alerted that the skull was coming down.

13:55:35 17 Q Not the whole body?

13:55:36 18 A Not the whole body.

13:55:37 19 Q In one of your reports, you indicated that a
13:55:40 20 transport service had brought the body down apparently,
13:55:44 21 right?

13:55:45 22 A Yes.

13:55:45 23 Q Is that just your assumption because that's the
13:55:47 24 way that human remains are typically transported between
13:55:52 25 outlying counties and the Forensic Science Center?

13:55:54 1 A No.

13:55:55 2 Q Do you have some records that show that?

13:55:56 3 A I do.

13:55:57 4 Q Can I take a look at that.

13:55:59 5 A Sure. Do you want the copy or the original?

13:56:05 6 Q Either one. Whatever you are --

13:56:07 7 A These are the originals, but I do have a copy if

13:56:09 8 you would like to impound them.

13:56:11 9 Q And this shows that the trans -- representative

13:56:22 10 was Steve from APT, right?

13:56:24 11 A Yes.

13:56:25 12 Q Okay. The body arrived at that date.

13:56:28 13 And then the body stayed at the Forensic

13:56:32 14 Science Center for how long before it was sent back to

13:56:33 15 Yavapai County?

13:56:34 16 A It was roughly -- it came in at 3:00 in the

13:56:37 17 afternoon on the 8th. It was there the 9th, and then it

13:56:40 18 was returned at noon on the 10th.

13:56:42 19 Q Okay. And then on -- about the 16th of July, the

13:56:50 20 head arrived?

13:56:51 21 A Yes.

13:56:51 22 Q Is that right?

13:56:52 23 And had you been alerted in advance the head

13:56:54 24 was going to arrive that day?

13:56:55 25 A Yes.

13:56:55 1 Q A Sheriff's deputy brought it down in a box?

13:56:57 2 A Yes.

13:56:57 3 Q Did you ever hear that actually Dr. Keen himself
13:57:03 4 drove the body down to the Forensic Science Center, not
13:57:06 5 APT?

13:57:07 6 A No.

13:57:07 7 Q Dr. Keen testified right where you are sitting
13:57:10 8 here and said that because he was going down to Phoenix
13:57:15 9 anyway, he put the body back in the body bag, put it in
13:57:20 10 the back of his pickup truck, bungee corded it down, and
13:57:23 11 drove it down to the Forensic Science Center.

13:57:26 12 Have you ever heard that story?

13:57:27 13 A No.

13:57:29 14 I take that back. I heard about it a couple
13:57:31 15 days ago, but I had never heard of it prior.

13:57:33 16 Q The paperwork you have doesn't coincide with
13:57:35 17 that?

13:57:35 18 A No, it does not and truthfully I think he may be
13:57:38 19 confusing it with a different case.

13:57:39 20 Q Is that right.

13:57:40 21 That's a pretty significant piece of
13:57:43 22 confusion, isn't it?

13:57:44 23 A Yes, it is.

13:57:45 24 Q That is not the way that human remains should be
13:57:47 25 treated in the State of Arizona; is that right?

13:57:49 1 A No.

13:57:49 2 Q You'd never do that in a million years, would
13:57:51 3 you?

13:57:52 4 A I have done that.

13:57:53 5 Q You've driven human remains around?

13:57:54 6 A Yes.

13:57:55 7 Q How do you feel about that?

13:57:55 8 A Not very good.

13:57:57 9 Q And how about putting human remains in the back
13:58:02 10 of a pickup truck, that are going to be taken down for
13:58:05 11 further scientific examination, what questions does that
13:58:09 12 raise in your mind?

13:58:10 13 A It would depend on the type of examination that
13:58:13 14 was going to be conducted.

13:58:14 15 There is the possibility that further damage
13:58:18 16 could be inflicted on the body by that process.

13:58:20 17 Q And you just never know, correct?

13:58:23 18 A That's right.

13:58:24 19 Q So it's an unprofessional thing to do?

13:58:27 20 A Yes. Well, having done it, I will tell you that
13:58:30 21 there are some scene locations that are so far remote out
13:58:33 22 in the desert that the only way to transport the body is
13:58:36 23 just exactly how Dr. Keen did it, and I have done that
13:58:39 24 myself.

13:58:39 25 I think the difference is that it was

13:58:43 1 necessitated by where I was as opposed to driving it down
13:58:49 2 the freeway.

13:58:49 3 Q Because he was going to be there?

13:58:50 4 A Because he happened to be, right.

13:58:52 5 Q Okay. You don't hold a medical license, do you?

13:58:54 6 A No.

13:58:55 7 Q You are not held to the standards that a doctor
13:58:57 8 is held to then, correct?

13:58:58 9 A In a different sort of way, I am, but not -- I
13:59:02 10 guess you're referring to ethical. I mean we are all held
13:59:04 11 to the same standards.

13:59:05 12 Q You are not licensed by the State of Arizona?

13:59:06 13 A No.

13:59:07 14 Q And you're not and were not and have never been a
13:59:12 15 Medical Examiner for any county in Arizona, correct?

13:59:15 16 A That's true.

13:59:16 17 Q You are not qualified to do that?

13:59:17 18 A That's correct.

13:59:17 19 Q And you would think that a Medical Examiner would
13:59:21 20 have to answer to somebody for standards and practices,
13:59:25 21 correct?

13:59:25 22 A Yes.

13:59:26 23 Q Particularly if you're a licensed physician like
13:59:29 24 Dr. Keen?

13:59:29 25 A Yes.

13:59:30 1 Q Okay. Do you think he's just confusing this case
13:59:33 2 with another?

13:59:34 3 A I have a memory that he brought another case to
13:59:36 4 me. It was also a skull or partial skeleton and he
13:59:42 5 brought it down and they stopped him at the guard gate and
13:59:45 6 turned him around. It was not this case, and I have never
13:59:50 7 heard that he brought the body down.

13:59:51 8 Q Is there a signature on that form for anybody
13:59:56 9 working for APT?

13:59:57 10 A Well, there's a signature of Steven somebody,
13:59:59 11 yes.

14:00:00 12 Q So that may be the driver?

14:00:01 13 A Yes.

14:00:02 14 Q So --

14:00:02 15 A It's not Dr. Keen's signature.

14:00:04 16 Q So Dr. Keen could just be totally wrong on this?

14:00:07 17 A It's a possibility.

14:00:08 18 Q Let's talk about science, though, as it is
14:00:13 19 practiced in the field of forensic anthropology. You told
14:00:16 20 us that a forensic anthropologist has a number of charges
14:00:20 21 I think that was your words, correct?

14:00:22 22 A JUROR: Can you speak up so we can hear you.

14:00:23 23 MR. SEARS: I'm sorry. I'm sorry. I certainly
14:00:25 24 will.

14:00:25 25 THE COURT: Thank you, Mr. Sears.

14:00:26 1 MR. SEARS:

14:00:26 2 Q You said you have a number of charges that you
14:00:33 3 believe you are answerable to in a particular case; is
14:00:36 4 that right?

14:00:36 5 A Yes.

14:00:37 6 Q And the charge -- one of the charges in this
14:00:39 7 particular case was to determine what? What were you
14:00:44 8 asked to do in this case?

14:00:45 9 A Oh, sorry. That was a question. I didn't get
14:00:48 10 that was a question.

14:00:49 11 The charge in this case was to document the
14:00:53 12 osseus trauma, which is the bony trauma, and to attempt to
14:00:58 13 determine the number of blows or impacts to the cranial
14:01:02 14 vault and if possible to determine whether there was
14:01:05 15 patterned injury and if so, what might have caused the
14:01:09 16 pattern.

14:01:09 17 Q And who gave you that charge?

14:01:10 18 A The Sheriff's office.

14:01:12 19 Q So you work with law enforcement on a regular
14:01:15 20 basis? You have told us that, correct?

14:01:16 21 A Yes, I do.

14:01:17 22 Q And there is a vast difference, isn't there, in
14:01:21 23 the work that you do and the work that law enforcement
14:01:22 24 does in the same case?

14:01:25 25 A Yes.

14:01:25 1 Q Law enforcement, they're trying to solve a case.
14:01:28 2 They are trying to learn not only what happened, but who
14:01:31 3 did it, correct?

14:01:32 4 A Yes.

14:01:32 5 Q And they're learning -- they want to learn who
14:01:35 6 did it so they can apprehend that person and prosecute
14:01:37 7 them for the crime, correct?

14:01:38 8 A Yes.

14:01:39 9 Q That's not your charge, is it?

14:01:41 10 A No.

14:01:41 11 Q Your charge is to determine what happened,
14:01:45 12 correct?

14:01:45 13 A Yes. Well, to determine what injuries are
14:01:49 14 present. What happened is like a different -- that gives
14:01:52 15 a different shade.

14:01:54 16 Q I was going to try and expand my question because
14:01:56 17 I realized it was incomplete. What happened to the osseus
14:01:59 18 bone, for example, in this case, right?

14:02:01 19 A Yes.

14:02:02 20 Q That's what you do?

14:02:04 21 A Yes.

14:02:04 22 Q And then Dr. Keen and other medical examiners
14:02:09 23 perform another function, correct?

14:02:10 24 A Yes.

14:02:11 25 Q There's a lot of overlap here. A lot of what law

14:02:14 1 enforcement does is useful to you, correct?

14:02:16 2 **A** Yes.

14:02:16 3 **Q** Obviously what you do is useful to them, correct?

14:02:18 4 **A** Yes.

14:02:19 5 **Q** The same thing with the Medical Examiner. You
14:02:21 6 work in some sort of concert with medical examiners like
14:02:25 7 Dr. Keen on a frequent basis, correct?

14:02:27 8 **A** Yes.

14:02:27 9 **Q** A Medical Examiner has a particular charge by
14:02:30 10 law; isn't that right?

14:02:30 11 **A** Yes.

14:02:31 12 **Q** To determine the cause of death, correct?

14:02:33 13 **A** Yes.

14:02:34 14 **Q** That's not what your charge is?

14:02:36 15 **A** That's correct.

14:02:37 16 **Q** That's a medical decision, correct?

14:02:40 17 **A** Yes, it is.

14:02:42 18 **Q** In this case our understanding from Dr. Keen is
14:02:46 19 that he wanted a reconstruction of the skull done to
14:02:50 20 assist in answering unanswered questions about the nature
14:02:55 21 and extent and possible cause or causes for these terrible
14:02:58 22 injuries, correct?

14:02:59 23 **A** I don't know that Dr. Keen ever wanted that. I
14:03:02 24 never spoke to him about the case until much later. I was
14:03:06 25 asked by law enforcement to do those functions.

14:03:08 1 Q Okay. You have told us today that you were aware
14:03:12 2 that Dr. Keen had attempted some sort of at least partial
14:03:16 3 repositioning of skull fragments before you did your work;
14:03:20 4 is that right?

14:03:20 5 A Yes.

14:03:21 6 Q That work was of no use to you in the
14:03:23 7 reconstruction you did; isn't that true?

14:03:25 8 A Of no use sort of implies that I think it was
14:03:29 9 useless. To me it didn't serve any purpose.

14:03:33 10 Q It was in no way connected to a reconstruction as
14:03:37 11 you performed it, correct?

14:03:38 12 A That's right.

14:03:39 13 Q It was an attempt by a non-forensic
14:03:42 14 anthropologist to do a repositioning of some large skull
14:03:47 15 fragments in this case, correct?

14:03:49 16 A As I understand it, yes.

14:03:50 17 Q Have you been told in the last few days that
14:03:52 18 apparently Dr. Keen made a mistake in the repositioning of
14:03:56 19 some of these fragments?

14:03:57 20 A No.

14:03:57 21 Q If I told you Dr. Keen conceded in that very seat
14:04:00 22 you are sitting in now, that he had misaligned a fragment
14:04:05 23 and had actually rotated it a 180 degrees, would that
14:04:08 24 surprise you?

14:04:09 25 A No.

14:04:09 1 Q It's not what he's trained to do, correct?

14:04:11 2 A No.

14:04:11 3 Q On the other hand, the work that you do, that you
14:04:14 4 have told us a couple of times is like reassembling a
14:04:17 5 giant jigsaw puzzle is precise when possible, correct?

14:04:20 6 A When possible, yes.

14:04:21 7 Q What you are trying to do is to reposition and
14:04:24 8 then glue together these fragments to create this three
14:04:27 9 dimensional shape; is that right?

14:04:28 10 A Yes.

14:04:29 11 Q So that's science, right?

14:04:30 12 A Yes.

14:04:31 13 Q And the science that's applied is an extensive
14:04:34 14 knowledge of human anatomy, correct?

14:04:37 15 A Yes.

14:04:37 16 Q Anatomical features are sometimes very tiny and
14:04:40 17 deformed pieces of bone, correct?

14:04:42 18 A Yes.

14:04:42 19 Q And it's not just skulls that you work with, you
14:04:44 20 work with all the bones of the body, correct?

14:04:46 21 A Yes.

14:04:47 22 Q And skulls have many smaller bones. We have seen
14:04:51 23 sometimes after traumatic injury, the shattering that we
14:04:54 24 have seen in this terrible case, correct?

14:04:56 25 A Yes.

14:04:57 1 Q And let's be real clear here, Doctor. This was a
14:04:59 2 horrific injury to this woman, correct?

14:05:01 3 A Yes.

14:05:02 4 Q And this was a, as you said, a brutalization of
14:05:05 5 this lady?

14:05:06 6 A Yes.

14:05:06 7 Q Correct?

14:05:06 8 And your testimony here today, though, is to
14:05:11 9 simply report to the jury the findings that you made,
14:05:16 10 correct?

14:05:16 11 A Yes.

14:05:16 12 Q Okay. Let's start with -- and you remember the
14:05:19 13 interview that we had in March of this year over at the
14:05:22 14 County Attorney's office. Do you remember that?

14:05:23 15 A Yes. Barely recovered from it, but yes.

14:05:26 16 Q Do you remember -- do you remember my colleague
14:05:28 17 Mr. Robertson was with us, right?

14:05:30 18 A Yes.

14:05:30 19 Q And Mr. Butner, of course, was there for the
14:05:32 20 County Attorney office and, in fact, it was in his office,
14:05:34 21 wasn't it?

14:05:34 22 A Yes, it was.

14:05:35 23 Q And at page 59 -- have you had a chance to look
14:05:37 24 at the transcript?

14:05:38 25 A I read it last night.

14:05:39 1 Q Okay. And at page 59 of that transcript, this is
14:05:45 2 what you say at line eight:

14:05:47 3 I also feel like they have the opinion that
14:05:51 4 I think a golf club did it and that I'm going to opine
14:05:55 5 that in court, and I can tell you right here today, I have
14:05:59 6 not told you that a golf club did it, nor will I opine
14:06:03 7 that in court. I think we're all hung up on the golf
14:06:06 8 club.

14:06:06 9 Do you remember saying that?

14:06:07 10 A Yes, I do.

14:06:08 11 Q And the "they" you were talking about was the
14:06:10 12 police, right?

14:06:11 13 A Yes. I believe you were reading me quotes from
14:06:13 14 their report at that time.

14:06:15 15 Q Right. And there were a couple of quotes from
14:06:18 16 their reports where they were attributing statements to
14:06:22 17 you that caught you off guard, right?

14:06:24 18 A Yes.

14:06:25 19 Q At one point you said wow?

14:06:26 20 A Yes, I did.

14:06:27 21 Q Do you remember?

14:06:27 22 A Said that a couple of times.

14:06:29 23 Q And the "wow" was that you were amazed at the way
14:06:34 24 the police were interpreting in their reports what they
14:06:38 25 claim you told them?

14:06:39 1 **A** I was surprised by the paraphrasing, because it
14:06:41 2 was more, how to say, it was more certain or sure,
14:06:49 3 positive than I had ever stated to them.

14:06:52 4 **Q** Well, let me tell you why, and let's see if we
14:06:55 5 can work through this together.

14:06:56 6 The Indictment in this case, the charging
14:06:58 7 document that has brought us all here to this trial,
14:07:01 8 alleges in part that my client, Steve Democker, killed
14:07:05 9 Carol Kennedy, his former wife, with a golf club.

14:07:09 10 **A** The document says that.

14:07:11 11 **Q** The document says that. It says golf club. It
14:07:14 12 doesn't say linear object with a curve and mass below. It
14:07:18 13 doesn't say anything other than golf club.

14:07:22 14 Okay. Trust me on this.

14:07:24 15 **A** I do. I don't know if I should, but I do.

14:07:27 16 **Q** I think if I was wrong -- I think if I was wrong,
14:07:29 17 you would hear it from Mr. Butner; isn't that right?

14:07:31 18 **A** Are you going to object? No. Okay. We're all
14:07:34 19 good. Yes, I believe you.

14:07:35 20 **Q** Thank you.

14:07:36 21 Now, understanding that, that the theory of
14:07:42 22 this case is that Steve Democker killed Carol Kennedy, the
14:07:47 23 lady whose skull you worked with, with a golf club and not
14:07:50 24 with any golf club, but with a particular Callaway Big
14:07:55 25 Bertha Steelhead 3 Number 7 Fairway wood left-handed.

14:08:00 1 That's the police theory in this case.

14:08:02 2 Can you begin to see the interest the police
14:08:06 3 would have in getting you, a scientist, to say that golf
14:08:10 4 club is the murder weapon?

14:08:12 5 A Yes.

14:08:12 6 Q And as you told me in March and as you said here
14:08:16 7 today, that's not what you're saying?

14:08:17 8 A Correct.

14:08:18 9 Q You are not saying that it was even a golf club,
14:08:21 10 correct?

14:08:22 11 A That's correct.

14:08:22 12 Q What you are saying is that there are some
14:08:24 13 injuries, and we'll talk in more detail about that, in
14:08:27 14 which a golf club cannot be ruled out, correct?

14:08:33 15 A All right. Now I am going to hold your feet to
14:08:37 16 the fire on which injuries you're discussing.

14:08:39 17 Q Let's start with the curvilinear fracture, and
14:08:43 18 what does curvilinear mean?

14:08:44 19 A It means that it's a line, but it's curved.

14:08:49 20 Q Okay. This line, this curved lined on this
14:08:52 21 picture that the jury has seen here, it's the one on the
14:08:55 22 right side of the head that looks sort of like a sunrise.
14:09:00 23 It's got an arc on the top and then a straight edge across
14:09:03 24 the bottom. It's an arc on the top and a straight edge
14:09:05 25 across the bottom. That's the curvilinear fracture on the

14:09:07 1 right side, correct?

14:09:08 2 A Yes.

14:09:08 3 Q The curvilinear fracture on the left side that
14:09:11 4 you have talked about is less clearly defined; isn't that
14:09:14 5 true?

14:09:14 6 A Yes.

14:09:14 7 Q And that it extends depending on which way you do
14:09:18 8 this, from the left orbit just above the left orbit up on
14:09:22 9 to the top of the head, and when it gets up to the top of
14:09:25 10 the head, is where the curvilinear portion is, correct?

14:09:28 11 A I don't think those two fractures are together.

14:09:31 12 Q Okay. You don't think the fracture from the left
14:09:33 13 orbit -- do you want to look?

14:09:34 14 A Yeah, I do. I think the fracture comes down and
14:09:37 15 it curves back on the side of the head. I'm not sure that
14:09:40 16 it has a connecting ray to the one that's over the eye.

14:09:43 17 Q Okay. Maybe I misunderstood you.

14:09:45 18 You said that this curvilinear fracture
14:09:47 19 shows some evidence of some scalloping in at least three
14:09:51 20 areas?

14:09:51 21 A Yes.

14:09:51 22 Q So it's not the sharply defined curvilinear
14:09:55 23 fracture that you see on the right side of the head?

14:09:57 24 A Right.

14:09:57 25 Q Okay. We will talk about that.

14:10:00 1 So let's talk about the golf club. You have
14:10:02 2 said here that a golf club, not just the Callaway with the
14:10:08 3 long name, that a golf club cannot be ruled out as having
14:10:13 4 caused the curvilinear fracture on the right side of the
14:10:16 5 head, right?

14:10:16 6 **A** I think I can just stop you right there. I don't
14:10:19 7 think any of the fractures on the skull can be ruled out
14:10:21 8 as being from a golf club, a wood in particular.

14:10:24 9 **Q** We are going to talk about some distinctions
14:10:26 10 between the non-curvilinear fractures though.

14:10:29 11 **A** Right.

14:10:29 12 **Q** Because I think there may be a broader class or
14:10:32 13 category of possible instruments for these linear
14:10:35 14 fractures. That is what you told me.

14:10:37 15 **A** If you are talking about multiple implements,
14:10:39 16 then yes.

14:10:39 17 **Q** We are going to get there.

14:10:40 18 **A** Okay.

14:10:41 19 **Q** Okay. Bear with me here.

14:10:42 20 **A** All right.

14:10:43 21 **Q** Now, when you say that something can't be ruled
14:10:47 22 out, that is in no way saying that it is the one and only
14:10:52 23 instrument that caused that. It just simply can't be
14:10:54 24 ruled out, correct?

14:10:55 25 **A** That's correct.

14:10:55 1 Q Mr. Butner was talking to you about a number of
14:10:58 2 other objects and put you on the spot and said, okay, here
14:11:01 3 you are August 27, 2010. Give me some other objects, and
14:11:06 4 the one that you mentioned that caught my attention again
14:11:08 5 was the river rock, correct?

14:11:10 6 A Yes.

14:11:10 7 Q Okay. Now, I happened to have had a case in
14:11:14 8 which a river rock was part of a murder. Okay. Big 20
14:11:19 9 pound murderous rock. Okay. And I understand what you
14:11:23 10 are saying is that there are things about a smooth river
14:11:25 11 rock, and I think we all understand what river rock is.
14:11:28 12 It's rock that's been taken from a streambed that's been
14:11:31 13 washed smooth by water, correct?

14 14 A Yes.

14:11:33 15 Q As opposed to a jagged piece?

14:11:34 16 A Right.

14:11:35 17 Q Granite?

14:11:35 18 A Usually has a very smooth contour.

14:11:37 19 Q And people often build fireplaces?

14:11:39 20 A Right, or put it in there -- did I step --

14:11:43 21 Q We have to go one at a time or she will raise her
14:11:45 22 hands again.

14:11:46 23 A I thought she was saying she had a fireplace made
14:11:48 24 of river rock.

14:11:50 25 Q No. She is saying one at a time. Trust me.

14:11:53 1 Okay. Now, a river rock has what you call
14:11:58 2 heft or mass, right?

14:11:59 3 A Yes.

14:12:00 4 Q It can cause -- and river rocks come in various
14:12:02 5 sizes, correct?

14:12:03 6 A Yes.

14:12:03 7 Q Okay. But your concern was how do you get your
14:12:06 8 hands on that and then not have your hands be part of that
14:12:09 9 injury?

14:12:11 10 A Right.

14:12:11 11 Q Right.

14:12:13 12 Would be one way, right?

14:12:22 13 Q If the rock was big enough?

14:12:24 14 A Yes.

14:12:25 15 Q Another way, using one of your demonstration
14:12:29 16 cups. Let's pretend this is a river rock here, because
14:12:31 17 it's a little less. That's another way, right?

14:12:35 18 A Okay. In theory, yes.

14:12:39 19 The problem I have with that is that I don't
14:12:41 20 think, unless the rock was really heavy and, remember,
14:12:45 21 that curve isn't very long. So you can't have a ginormus
14:12:50 22 800 pound rock. I mean we are talking about a fairly
14:12:52 23 small rock. So unless it's made of something very heavy,
14:12:55 24 dropping it or throwing it is not going to create that
14:12:59 25 impact that you see.

14:12:59 1 Q How about a rock that is larger than this and
14:13:03 2 obviously much heavier, but shaped somewhat like this.
14:13:05 3 Someone holds one end --
14:13:07 4 A Where it has --
14:13:08 5 Q -- and hits the other end --
14:13:10 6 A Yes.
14:13:11 7 Q -- against the head.
14:13:12 8 A Yes.
14:13:13 9 Q Can't rule it out?
14:13:14 10 A No.
14:13:14 11 Q We live in Northern Arizona. There are rocks
14:13:19 12 everywhere, correct?
14:13:20 13 A Yes.
14:13:20 14 Q There are river rocks and in lots of places,
14:13:23 15 correct?
14:13:23 16 A Yes.
14:13:23 17 Q You never went to this crime scene, correct?
14:13:25 18 A No.
14:13:26 19 Q What you said was that you needed something with
14:13:32 20 some mass and what did you say? Heft?
14:13:36 21 A Heft. I used the word heft. It just means it
14:13:39 22 has some weight to it.
14:13:39 23 Q And I forget what you did -- this is, oh, I can
14:13:47 24 tell from -- that's a Sheriff's sticker. Do we know?
14:13:51 25 Maybe 2977. May I hand this to the witness,

14:13:55 1 your Honor?

14:13:56 2 THE COURT: You may.

14:13:58 3 MR. SEARS:

14:13:58 4 Q That's really light, isn't it?

14:14:00 5 A It's light, but the weight of it is in the head
14:14:04 6 and it has the snapping to it which I referred to as like
14:14:08 7 a flexibility in the handle that allows it to increase its
14:14:12 8 ability to generate force, because it's a whipping action.

14:14:15 9 Q It's a golf club. That's how they work, right?

14:14:18 10 A I don't know. Sure.

14:14:20 11 Q Okay. So the idea, if you were going to play
14:14:23 12 golf with this, you wouldn't choke it up like this and try
14:14:27 13 and hit it. You try to get your hands down at the end and
14:14:31 14 swing this golf club using the length of the club, right?

14:14:34 15 A Yes.

14:14:35 16 Q And if it was a graphite flexible shaft, you
14:14:37 17 would get the benefit of that whip in that shaft?

14:14:40 18 A Yes.

14:14:40 19 Q So that is how this light hollow head could
14:14:47 20 produce enough force, right?

14:14:49 21 A That's one way, yeah.

14:14:50 22 Q You are not a biomechanical engineer, right?

14:14:52 23 A I am not.

14:14:53 24 Q And you don't know how many foot pounds of
14:14:55 25 pressure, for example, could be generated by a golf club,

14:14:58 1 right?

14:14:59 2 **A** Right.

14:14:59 3 **Q** You don't know necessarily how many foot pounds
14:15:00 4 of pressure it would take to fracture a human skull.

14:15:02 5 **A** I actually do know that. It's in the
14:15:04 6 neighborhood of 400 PSI.

14:15:07 7 **Q** If I told you it was closer to 900 based on
14:15:09 8 current studies, does that sound right?

14:15:10 9 **A** Yeah. Depends on who is doing the study.

14:15:12 10 **Q** Depends on whose skull and what part of the skull
14:15:14 11 we are talking about.

14:15:15 12 **A** Correct.

14:15:15 13 **Q** But you don't have any training or ability that
14:15:18 14 relates foot pounds to that?

14:15:21 15 **A** No.

14:15:21 16 **Q** And you're not a crime scene reconstructionist,
14:15:25 17 right?

14:15:26 18 **A** In its specific terms, no. I mean I don't have
14:15:30 19 any training in that, but part of what I do is a creation
14:15:35 20 of the events leading up to the death of the person.

14:15:38 21 **Q** But you didn't do that in this case, right?

14:15:39 22 **A** Well, I mean everything that we have talked about
14:15:41 23 today, that is what we're doing.

14:15:43 24 **Q** But you are not -- you haven't gotten up here and
14:15:45 25 demonstrated how you think this attack took place?

14:15:47 1 **A** No.

14:15:47 2 **Q** And you weren't asked to do that and you don't
14:15:49 3 have an opinion about that?

14:15:49 4 **A** I don't.

14:15:50 5 **Q** You don't know which way the people were
14:15:52 6 standing, correct?

14:15:52 7 **A** Right.

14:15:53 8 **Q** You don't know whether people were lying on the
14:15:55 9 ground or sitting up or anything about that, correct?

14:15:57 10 **A** That is correct.

14:15:57 11 **Q** Okay. You just know that the injury is to the
14:16:01 12 bones of the head, correct?

14:16:02 13 **A** Yes.

14:16:03 14 **Q** Okay. Now, this is what you said further on at
14:16:07 15 page 59: Well, the injury looks like a golf club, and I
14:16:11 16 believe we were talking about this curvilinear fracture,
14:16:14 17 but it could be other things, too, and I think it's -- and
14:16:17 18 I said it looks like a rising sun. I said it then and I
14:16:20 19 said it again today. You said I think the second half of
14:16:23 20 the sentence has gotten lost with law enforcement.

14:16:25 21 What sentence were you talking about? Do
14:16:27 22 you remember?

14:16:28 23 **A** I think in general terms, I was thinking that the
14:16:33 24 fact that I was trying to say to them I'm not going to
14:16:38 25 testify in court that it is a golf club, but the converse

14:16:43 1 of that is I am not going to say in court that it's not a
14:16:46 2 golf club.

14:16:47 3 Q It's just one of a class of objects?

14:16:48 4 A Yes. I just thought of another one. May I?

14:16:53 5 THE COURT: Mr. Sears will --

14:16:54 6 MR. SEARS:

14:16:55 7 Q Let me ask a question. Let me ask you a
14:16:56 8 question: Have you thought of another one?

14:16:56 9 A I did.

14:17:00 10 Q Please answer.

14:17:01 11 A Yes, I did.

14:17:02 12 Q Okay.

14:17:02 13 A It had nothing to do with the fact that you're
14:17:04 14 asking the questions, but the gavel --

14:17:07 15 Q Okay.

14:17:08 16 A -- it has a shaft. It has this shape to it.

14:17:11 17 Theoretically if it were heavy enough and made out of the
14:17:14 18 right material, this would be something else.

14:17:16 19 Q You were talking about a rubber mallet?

14:17:18 20 A Yes.

14:17:18 21 Q Okay.

14:17:20 22 A Sorry, your Honor.

14:17:21 23 Q You were talking about a rubber mallet, which is
14:17:23 24 basically shaped just like this except it's got a -- it's
14:17:27 25 designed -- this is a decorative gavel for courtroom

14:17:31 1 appearances. A rubber mallet is designed as a tool,
14:17:33 2 right?

14:17:33 3 A Right.

14:17:34 4 Q And it has a large hard rubber head, correct?

14:17:36 5 A Yes.

14:17:37 6 Q And has a thicker shaft on it typically, right?

14:17:39 7 A Yes.

14:17:40 8 Q And it's designed to pound things?

14:17:41 9 A Yes.

14:17:42 10 Q Right?

14:17:42 11 Pound in things where you don't want to
14:17:44 12 leave a dent, but you can really pound things like that.

14:17:47 13 And are you saying that if that were struck
14:17:50 14 sideways on the head like this, is that the aspect of it?

14:17:54 15 A If it's curved, but you just said you don't want
14:17:56 16 to make a dent. The skull has many dents.

14:17:59 17 Q Well, I said when it's used properly.

18 A Oh.

14:18:02 19 Q It's not used to kill a human being.

14:18:03 20 A I see. If it had a curved profile, then, yeah.

14:18:07 21 Q The end of it has a curve to it, right?

14:18:10 22 A Right.

14:18:11 23 Q But it's more like a ball-peen hammer?

14:18:12 24 A It's a little bit circumscribed for me. Narrow.

14:18:16 25 Q When you say circumscribed --

14:18:17 1 A I mean --

14:18:18 2 Q -- it becomes a circle.

14:18:18 3 A And it's small.

14:18:20 4 Q Okay. But you can't rule it out?

14:18:22 5 A No. Well, if you had one of the right dimension
14:18:26 6 that didn't weigh too much, you can't rule it out.

14:18:29 7 Q Well, let's go back and talk about the science of
14:18:34 8 fractures on the human skull. That's a particular
14:18:37 9 subspecialty within the field of forensic anthropology,
14:18:41 10 correct?

14:18:41 11 A Yeah.

14:18:43 12 Q For example, are you familiar with the work of
14:18:45 13 Dr. Ann Kromen?

14:18:47 14 A Yes.

14:18:48 15 Q And you know she has done specific studies of the
14:18:52 16 fracturing of the human skull, correct?

14:18:54 17 A Yes.

14:18:54 18 Q Using human skulls?

14:18:55 19 A Yes.

14:18:55 20 Q Not a Styrofoam cooler?

14:18:57 21 A Yes.

14:18:58 22 Q You're not suggesting that your -- I think you
14:19:00 23 said in your interview, whacking the crap out of a
14:19:04 24 Styrofoam cooler, you wouldn't consider that a scientific
14:19:08 25 experiment, correct?

14:19:09 1 A No.

14:19:09 2 Q You wouldn't submit that to the American Academy
14:19:13 3 of Forensic Sciences and go to their meeting and present
14:19:14 4 that work, correct?

14:19:15 5 A No.

14:19:15 6 Q And you wouldn't go to the American Academy of
14:19:18 7 Forensic Science with a crumpled up plastic cup, right?

14:19:21 8 A Not unless it supported whatever I was trying to
14:19:24 9 prove.

14:19:24 10 Q Okay. But you have done scholarly work, for
14:19:26 11 example, in the corrosive effects of certain substances on
14:19:29 12 human bones, right?

14:19:30 13 A Yes.

14:19:31 14 Q And that was real science when you did that,
14:19:33 15 right?

14:19:34 16 A Yes.

14:19:34 17 Q You followed all the scientific methods and
14:19:36 18 principles in that testing, right?

14:19:38 19 A Yes.

14:19:39 20 Q And whacking the crap out of a Styrofoam cooler
14:19:42 21 is not scientific principle, correct?

14:19:46 22 A Right.

14:19:46 23 Q You were just trying to see what it looked like,
14:19:48 24 right?

14:19:48 25 A Right.

14:19:50 1 Q And tracing the end of a golf club to get an idea
14:19:55 2 of the representation, that wasn't a scientific
14:19:57 3 experiment, was it?

14:19:58 4 A No.

14:19:58 5 Q And so the drawings that we have seen here were
14:20:03 6 just your effort to see what the different surfaces of not
14:20:07 7 just -- any golf club, but actually this very golf club
14:20:11 8 here? This is the one they brought to you?

14:20:12 9 A I believe that's right.

14:20:13 10 Q Okay. And so you were just trying to draw what
14:20:16 11 this is -- this is what you called the hitting surface,
14:20:19 12 right?

14:20:19 13 A Yes.

14:20:19 14 Q And then you were looking at the back of the
14:20:21 15 club?

14:20:21 16 A Yes.

14:20:22 17 Q Right?

14:20:22 18 That's this area right here, correct?

14:20:23 19 A Yes.

14:20:24 20 Q And then there was a time when you put it down on
14:20:26 21 the ground and traced it that way, right?

14:20:27 22 A Yes.

14:20:28 23 Q You were trying to see what those areas looked
14:20:30 24 like, right?

14:20:30 25 A Right.

14:20:31 1 Q To see if they looked something like this injury
14:20:33 2 you saw on the head, right?

14:20:34 3 A Yes.

14:20:35 4 Q And this is the phenomenon that you are talking
14:20:37 5 about, of how the cup, when you are holding the club, just
14:20:39 6 kind of changes depending on how you're handling it. You
14:20:43 7 can grip it so it doesn't move, right?

14:20:44 8 A Yes.

14:20:45 9 Q But if you are holding it more loosely in your
14:20:46 10 hands, it tends to flip from side to side, right?

14:20:49 11 A If you are not using it to hit a golf club -- a
14:20:52 12 ball, it moves in your hand.

14:20:54 13 Q Now, would you agree with me that it is possible
14:21:01 14 for a linear object -- and what's a linear object compared
14:21:05 15 to a curvilinear object?

14:21:07 16 A A crowbar, a bat, a pipe, anything that
14:21:14 17 doesn't -- a crowbar has a curve in it inherent in the
14:21:18 18 style. Now, there are some that are not like a cat's paw.
14:21:21 19 Just is flat. But most crowbars have, and that gives it
14:21:25 20 an extra torque, so that --

14:21:26 21 Q Piece of rebar?

14:21:27 22 A Yes.

14:21:27 23 Q Just a straight --

14:21:28 24 A Rebar is curved. It has a curved shape, but
14:21:32 25 it's -- its axis is long. It's linear.

14:21:35 1 Q A wooden dowel?

14:21:36 2 A A wooden dowel, the same thing.

14:21:37 3 Q Is a linear object?

14:21:38 4 A Yes.

14:21:38 5 Q It is possible, and you know this, for a linear

14:21:44 6 object to cause a curved fracture on a human skull?

14:21:47 7 A Yes.

14:21:47 8 Q Okay. And part of the reason for that you told

14:21:50 9 me, and others have told me, including Dr. Kromen, is that

14:21:55 10 the human skull itself is curved?

14:21:56 11 A Yes.

14:21:57 12 Q Okay. And so when you strike a curved object

14:22:00 13 with a straight object, it can produce a curved fracture,

14:22:04 14 correct?

14:22:04 15 A Yes.

14:22:04 16 Q Now, you have never done any scientific

14:22:06 17 experiments using human skulls to determine how fractures

14:22:11 18 occur, have you?

14:22:12 19 A No.

14:22:13 20 Q But you know that that has been done?

14:22:15 21 A Yes.

14:22:16 22 Q Okay. And it's difficult to do because you're

14:22:19 23 using -- trying to use human skulls and crush human

24 skulls.

25 A Yes.

14:22:22 1 Q There is not an inexhaustible supply of human
14:22:24 2 skulls?

14:22:24 3 A Well, there is, but it's called murder, so we
14:22:27 4 don't do it.

14:22:27 5 Q For scientists to work with?

14:22:29 6 A Yes.

14:22:29 7 Q Who want to present their papers to the American
14:22:31 8 Academy of Forensic Science like Dr. Kromen?

14:22:34 9 A Yes.

14:22:34 10 Q And experiments have been done with animal
14:22:37 11 skulls?

14:22:37 12 A Yes.

14:22:37 13 Q Particularly pig skulls, but those have been
14:22:39 14 unsatisfactory, correct?

14:22:40 15 A To me, they are. The pig skull is about four
14:22:42 16 times as thick as a human skull, so --

14:22:45 17 Q And then objects -- you and I talked about
14:22:47 18 watermelons?

14:22:48 19 A Yes.

14:22:48 20 Q Right?

14:22:49 21 A watermelon, other than its shape, bears
14:22:52 22 very little resemblance otherwise to a human skull,
14:22:55 23 correct?

14:22:56 24 A Right.

14:22:56 25 Q So hitting a watermelon with an object isn't

14:22:57 1 going to give you much scientific information, correct?

14:23:01 2 **A** Right.

14:23:01 3 **Q** And you would -- if I understand what you are
14:23:07 4 saying, is that your first impression when you saw that
14:23:09 5 was golf club and then you kind of refined that, and
14:23:12 6 you're still at the point now where that's an object that
14:23:16 7 you can't rule out as causing that, right?

14:23:18 8 **A** Right.

14:23:18 9 **Q** And when I say "that," I mean the fracture on the
14:23:20 10 right side?

14:23:21 11 **A** Right.

14:23:21 12 **Q** And you're a little less certain, if I understand
14:23:24 13 what you are saying, about the curvilinear fracture on the
14:23:27 14 left side towards the top also being caused by a golf
14:23:30 15 club?

14:23:30 16 **A** I think I just said a few minutes ago that all of
14:23:33 17 the fractures on the skull could have been caused by the
14:23:36 18 golf club.

14:23:37 19 **Q** But this is where I think maybe we can draw some
14:23:39 20 distinctions, because I think you have drawn some
14:23:42 21 distinctions.

14:23:43 22 The fractures on the left side that we saw,
14:23:46 23 the comminuted fractures that caused all that horrible
14:23:50 24 damage, many of those fractures have no curvilinear aspect
14:23:55 25 to them at all, correct?

14:23:56 1 A Yes.

14:23:56 2 Q That would open up then, I would assume, the
14:24:00 3 range of possible objects to objects that themselves are
14:24:04 4 not curved, correct?

14:24:05 5 A Yes.

14:24:06 6 Q Okay. Now, I think we started to talk about this
14:24:10 7 and I said we would get back to it.

14:24:11 8 You cannot rule out multiple objects as
14:24:16 9 causing the fractures on this woman's head, can you?

14:24:18 10 A No.

14:24:19 11 Q So there could have been something with a curve,
14:24:23 12 maybe even a golf club, causing some of the fractures,
14:24:26 13 correct?

14:24:26 14 A Yes.

14:24:26 15 Q But there may have been other objects, more than
14:24:28 16 one perhaps, causing the other injuries you saw, correct?

14:24:31 17 A Yes.

14:24:32 18 Q And that would then raise the possibility, I
14:24:34 19 suppose, of multiple assailants, correct?

14:24:38 20 A I wouldn't even hazard a guess.

14:24:40 21 Q Well, you would have a couple of possibilities.
14:24:42 22 I think some of this might be easily observable by you.
14:24:46 23 You could have one assailant with a range of objects,
14:24:50 24 putting them down, picking them up, and using different
14:24:53 25 objects to cause injuries, correct?

14:24:55 1 A Yes.

14:24:56 2 Q Or you could have two or three or four people,
14:24:59 3 each with a different object in their hand, attacking this
14:25:02 4 woman in some sequence, correct?

14:25:04 5 A Yes.

14:25:05 6 Q So --

14:25:07 7 MR. BUTNER: Objection, Judge. We are moving
14:25:09 8 into an area where I think the witness has -- does not
14:25:12 9 have foundation, and that was already established.

14:25:16 10 THE COURT: Overruled. You may -- the question
14:25:19 11 was answered.

14:25:19 12 Go ahead, Mr. Sears.

14:25:20 13 THE WITNESS: Sorry.

14:25:21 14 MR. SEARS:

14:25:22 15 Q There is no question.

14:25:23 16 A No. I said sorry because I answered the question
14:25:25 17 before he could object.

14:25:27 18 Q But that is still your answer?

14:25:29 19 A Yes.

14:25:29 20 Q Now, and that's a good rule to follow. If
14:25:35 21 Mr. Butner has an objection, please stop and wait for the
14:25:38 22 judge to rule on the objection and that way we don't have
14:25:42 23 to be concerned about the answer that came.

14:25:44 24 Is that fair?

14:25:44 25 A Yes.

14:25:45 1 Q Now, so you can't rule out multiple objects,
14:25:50 2 correct?

14:25:51 3 A Yes.

14:25:52 4 Q And you can't rule out -- yes, that's correct?

14:25:58 5 A I cannot rule out multiple objects.

14:26:00 6 Q Thank you.

14:26:01 7 And you can't rule out multiple assailants,
14:26:04 8 correct?

14:26:04 9 MR. BUTNER: Objection. Foundation.

14:26:08 10 THE COURT: Overruled.

14:26:10 11 MR. SEARS:

14:26:11 12 Q If you can?

14:26:11 13 A I cannot rule out multiple assailants.

14:26:14 14 Q Now, you used the word impact very carefully in
14:26:19 15 your testimony today and I know that because you and I
14:26:22 16 spent considerable time back in March talking about
14:26:25 17 impact.

14:26:26 18 When you say here today to the jury that you
14:26:29 19 see impacts, that doesn't mean that each place you say
14:26:33 20 there's an impact was a place where someone struck Carol
14:26:37 21 Kennedy with an object? That's not what you're saying,
14:26:40 22 correct?

14:26:40 23 A That's right.

14:26:41 24 Q What's your definition of an impact then?

14:26:43 25 A An impact is anything that -- that touches the

14:26:47 1 skull. So it could be an object hitting the skull. It
14:26:50 2 could be the skull hitting an object, a wall, a floor, ad
14:26:55 3 nauseam.

14:26:55 4 Q And, in fact, you told me back in March that you
14:26:59 5 saw a minimum of one, possibly two impacts with an object,
14:27:05 6 correct? Where an object was used as a weapon?

14:27:08 7 A That's probably true, yes.

14:27:14 8 Q And those would be the one curvilinear fracture
14:27:18 9 on the right side you believe is caused by a weapon strike
14:27:21 10 or an object strike --

14:27:22 11 A An object.

14:27:23 12 Q An object if it's used that way presumably as a
14:27:25 13 weapon?

14:27:25 14 A Yes.

14:27:26 15 Q And perhaps the curvilinear fracture on the other
14:27:30 16 side towards the top, correct?

14:27:31 17 A Yes.

14:27:31 18 Q And every other fracture that you saw, you could
14:27:38 19 not associate with Carol having been struck by some object
14:27:43 20 that was being wielded by a person or persons, right?

14:27:45 21 A I think we talked about focal points and the
14:27:50 22 chipping that you see in some of those areas of
14:27:52 23 convergence is -- the change is caused by the skull
14:27:59 24 striking something or being struck by something, but it
14:28:02 25 has to have some kind of a focal point to create the chip.

14:28:05 1 And if you -- if you hit it on the flat surfaces like a
14:28:09 2 table or the floor or the wall, you are not necessarily
14:28:12 3 going to see that chipping action.

14:28:15 4 Q Right.

14:28:15 5 A And -- and I think we talked about that.

14:28:17 6 Q I understand, and there's another phenomenon and
14:28:19 7 we talked about that, and I don't think you covered it
14:28:20 8 with Mr. Butner, and that's this: That for a number of
14:28:26 9 reasons, that if the human head is against an object, for
14:28:32 10 example, if it were resting on that bench in front of you
14:28:35 11 on one side, and it were struck with a lot of force on the
14:28:38 12 other side, that striking on the other side could produce
14:28:43 13 a corresponding fracture on the side that is against the
14:28:47 14 bench, correct?

14:28:47 15 A Yes.

14:28:47 16 Q How does that work?

14:28:48 17 A It has to do with the biomechanics. Again, we
14:28:52 18 are talking about resistance, so when the head is down on
14:28:55 19 something and it's impacted, there is nowhere for it to go
14:28:58 20 to escape the force that's being applied to it. So it
14:29:01 21 breaks in response to that.

14:29:03 22 Q And the fracture on the other side then may have
14:29:07 23 a particular shape to it, correct? The fracture -- when I
14:29:10 24 said the other side, the side that is against some object,
14:29:13 25 against a desk or a table or the floor, correct?

14:29:15 1 **A** Are we talking about in this case or in general?

14:29:17 2 **Q** In general.

14:29:18 3 **A** In general, if the skull is up against something
14:29:21 4 that has a shape, it might mimic the shape that it's up
14:29:24 5 against. If it's up against a flat surface, you would be
14:29:26 6 more likely to see the splits like you would see in a
14:29:28 7 watermelon when you drop it on the ground.

14:29:30 8 **Q** Were you at the American Academy of Forensic
14:29:33 9 Science's meeting about seven years ago when Dr. Kromen
14:29:38 10 presented her experiments with the human skull being laid
14:29:43 11 up against a board and force being applied to other side?
14:29:46 12 Do you remember that?

14:29:47 13 **A** I don't remember the paper, but I read her
14:29:48 14 dissertation, so -- yeah.

14:29:50 15 **Q** And that's the work that she has done, and were
14:29:52 16 you aware that when, in her experiments using human
14:29:57 17 skulls, that when she struck what I will call the upside,
14:30:00 18 the side that is not against the object -- in this case it
14:30:05 19 was a board -- with a linear object, it looked like a
14:30:09 20 piece of cylindrical rod, that it produced fractures on
14:30:14 21 the side where it struck?

14:30:14 22 You would expect that, right?

14:30:15 23 **A** Yes.

14:30:16 24 **Q** But a fracture -- a corresponding identical
14:30:18 25 fracture on the side that was against a flat board?

14:30:21 1 **A** Yes. Now, that is not -- the object that I saw
14:30:24 2 was a large bore, like this big around, metal tube and it
14:30:29 3 had sort of a shallow curve to the bottom of it. That's
14:30:33 4 different from what you're describing.

14:30:34 5 **Q** Uh-huh. Yeah. That's the one. She had a Power
14:30:36 6 Point.

14:30:36 7 **A** It's big.

14:30:37 8 **Q** She had a Power Point. Sure.

14:30:38 9 **A** It's big. It's not linear.

14:30:39 10 **Q** Sure. But it had a linear aspect to it?

14:30:41 11 **A** No, it doesn't. It's big. It's big and round
14:30:44 12 like this and it has a very shallow thing on it.

14:30:46 13 **Q** We are going to see that from Dr. Kromen later
14:30:49 14 on.

14:30:49 15 **A** Okay. I don't think it's linear.

14:30:50 16 **Q** Do you remember that paper?

14:30:51 17 **A** Well, I remember -- I looked at her dissertation.

14:30:54 18 **Q** Do you remember what the fracture looked like on
14:30:56 19 the side that was not struck by that object?

14:30:59 20 **A** That it mimicked.

14:31:00 21 **Q** It was a curved fracture?

14:31:02 22 **A** Yeah.

14:31:02 23 **Q** Yeah. It was a curved fracture and it wasn't
14:31:05 24 struck by anything?

14:31:05 25 **A** Yeah.

14:31:06 1 Q So that's an example of getting a curved fracture
14:31:09 2 on the skull -- is that called transfer?

14:31:12 3 A Yes.

14:31:12 4 Q For reference, is it a transferred fracture?

14:31:15 5 A It's a -- that's -- yes, that's one way to
14:31:17 6 describe it.

14:31:18 7 Q So that's an interesting phenomenon?

14:31:21 8 A Yes, it is.

14:31:22 9 Q Curved fracture on the skull that wasn't struck
14:31:26 10 by a curved object, correct?

14:31:28 11 A If you say so.

14:31:30 12 Q Do you remember seeing that?

14:31:30 13 A I didn't see the paper, so I can't comment.

14:31:33 14 Q I'm sorry. I thought you said you did?

14:31:36 15 A I looked at the photos in her dissertation.

14:31:38 16 Q Did you see photos of that curved fracture?

14:31:41 17 A I don't remember seeing a -- a curved fracture
14:31:44 18 that looked like what you are describing.

14:31:46 19 Q The other reason that you told me that -- or
14:31:54 20 actually you told Mr. Robertson that -- how curvilinear
14:31:59 21 fractures can be caused by non-curved objects in addition
14:32:04 22 is because the skull was curved.

14:32:05 23 That was one factor, right?

14:32:06 24 A Right.

14:32:06 25 Q You also said it's because the skull has varying

14:32:09 1 thicknesses and the fracture is going to run along the
14:32:12 2 line of least resistance. That is at page 48 of your
14:32:15 3 transcript.

14:32:16 4 What does that mean?

14:32:16 5 A It means that in the skull, there are various
14:32:19 6 parts of the skull that are either thicker or thinner and
14:32:21 7 so they react differently to trauma, and just like in a
14:32:26 8 piece of wood, the fracture line is going to run along the
14:32:29 9 area of least resistance or the weakest part, so in the
14:32:34 10 skull you might see that also.

14:32:35 11 Q Okay. In this particular case, you were doing
14:32:39 12 your work between the 16th and 28th of July of 2008,
14:32:43 13 correct?

14:32:43 14 A Yes.

14:32:43 15 Q And on the 28th of July, Rhodes here and a couple
14:32:47 16 of the other officers came down to the Forensic Science
14:32:50 17 Center with this golf club, didn't they?

14:32:52 18 A Yes.

14:32:53 19 Q And they wanted you to look at this golf club,
14:32:55 20 right?

14:32:55 21 A Yes.

14:32:55 22 Q They wanted you to take photographs of the golf
14:32:58 23 club against the skull as you reconstructed?

14:33:00 24 A It was actually my idea.

14:33:02 25 Q And actually you said that at the end that was

14:33:05 1 not a good idea, right?

14:33:06 2 **A** Right.

14:33:06 3 **Q** Why?

14:33:07 4 **A** Because when you take a photograph of a
14:33:11 5 particular object and you put it with a particular injury,
14:33:14 6 it's too easy to make the link between the two when, in
14:33:18 7 fact, that's not what I was going to testify to. It makes
14:33:22 8 it too real. Let me put it that way.

14:33:24 9 **Q** Did you ever see the pictures that were taken
14:33:27 10 when Dr. Keen took the body out on -- we think the 15th of
14:33:31 11 July, there's some evidence it's on the 14th of July -- up
14:33:34 12 here at the morgue and had that club laid against various
14:33:38 13 injuries on the body.

14:33:39 14 Did you ever see those pictures?

14:33:40 15 **A** Yes.

14:33:40 16 **Q** Would that be an example of exactly what you are
14:33:42 17 talking about, that it's too easy to use that club with
14:33:46 18 those injuries to compel the observer to say that must be
14:33:50 19 the weapon?

14:33:51 20 **A** I wouldn't say that it compels it, but it draws
14:33:55 21 a -- it draws a link between the two. If -- you could
14:33:58 22 also argue that it's helpful to rule out a weapon.

14:34:02 23 **Q** Okay. But those pictures weren't designed to
14:34:04 24 rule out a weapon, were they?

14:34:05 25 **A** I don't know what their purpose was.

14:34:07 1 Q They were designed to make it appear at least
14:34:10 2 that club caused those injuries?

14:34:12 3 A Or it could have caused those injuries.

14:34:16 4 Q Now, in your report and when you talked to the
14:34:19 5 police, you recommended that they test other objects
14:34:22 6 because they came in talking about this golf club, right?

14:34:26 7 A Yes.

14:34:27 8 Q And have you heard -- you have heard enough of us
14:34:29 9 to understand why they became fixated early on about that
14:34:33 10 golf club or a golf club identical to that. Do you
14:34:36 11 understand that story?

14:34:38 12 A I don't like the term fixated. I don't think
14:34:41 13 that's --

14:34:42 14 Q Obsessed?

14:34:43 15 A You're characterizing their opinion.

14:34:46 16 Q They had a strong opinion within the first couple
14:34:50 17 of weeks of this case that they knew what the murder
14:34:52 18 weapon was, right?

14:34:53 19 A I don't know that.

14:34:54 20 Q They brought you one object, right?

14:34:57 21 A They brought me an object.

14:34:58 22 Q And they brought you that golf club, right?

14:35:01 23 A Yes.

14:35:02 24 Q And you knew then that Dr. Keen had been brought
14:35:04 25 that golf club, right?

14:35:05 1 **A** I did not know that, no.

14:35:07 2 **Q** You know now the Indictment says golf club,
14:35:10 3 right?

14:35:10 4 **A** Yes.

14:35:10 5 **Q** The Indictment doesn't say some object. It says
14:35:13 6 golf club, correct?

14:35:14 7 **A** Yes.

14:35:14 8 **Q** Do you see the narrowing of interest beginning
14:35:17 9 within the first few weeks of this investigation to a golf
14:35:21 10 club as the weapon?

14:35:22 11 **A** I am just not sure how it's relevant to what we
14:35:25 12 are talking about.

14:35:25 13 **Q** Well, it's relevant because you went another
14:35:28 14 direction with them and you recommended that they test
14:35:31 15 other objects, correct?

14:35:33 16 **A** Yes.

14:35:34 17 **Q** What objects were you thinking of?

14:35:36 18 **A** Any object that has a curvilinear shape with a
14:35:40 19 linear shape that are in direct concordance with one
14:35:45 20 another that might match the imprint that we see on the
14:35:48 21 skull.

14:35:48 22 **Q** And you say it could have been a homemade object,
14:35:49 23 right?

14:35:50 24 **A** Yes.

14:35:50 25 **Q** You told us a very interesting story back in

14:35:52 1 March about a case you had that had some really curious
14:35:55 2 pattern injuries, right?

14:35:56 3 A Yes.

14:35:57 4 Q Didn't seem to match up to some common objects,
14:35:59 5 right?

14:35:59 6 A Yes.

14:36:00 7 Q Okay. Tell -- would you tell the jury that
14:36:02 8 story?

14:36:02 9 A Sure. We had a case where a man came in who had
14:36:05 10 a very circular defect on the side of his head and it
14:36:09 11 wasn't punched out. You didn't see the comminuted
14:36:12 12 fractures like you see in Mrs. Kennedy's case, and at the
14:36:16 13 time I told the Medical Examiner that I thought it was an
14:36:20 14 object that had some sort of penetrating force followed by
14:36:23 15 some sort of blunt force, because the hole was clean like
14:36:26 16 a gunshot wound, but it was too big to be a gunshot wound.

14:36:29 17 Ultimately, when law enforcement did the
14:36:31 18 search, they found a homemade piece of wood that was about
14:36:35 19 maybe this long that had a metal nipple on the end of it
14:36:38 20 that came down to a point. So it was a point followed by
14:36:42 21 a wooden dowel, but a big dowel. And it was used as kind
14:36:47 22 of a like a trash picking type tool, and when I saw it, I
14:36:51 23 said, ah ha, that is exactly what I am talking about.

14:36:53 24 Q And did that turn out to be murder weapon?

14:36:55 25 A I don't know. I wish I could say yes, but I

14:36:58 1 don't know.

14:36:58 2 Q But that is what you thought, right?

14:36:59 3 A I thought it was something that had both of those
14:37:02 4 components.

14:37:03 5 Q So the mere fact that it's difficult to think of
14:37:05 6 a homemade object -- sorry -- of store bought objects that
14:37:09 7 fit your description, doesn't mean that there aren't
14:37:13 8 homemade objects like your case that could have been
14:37:16 9 applied, right?

14:37:16 10 A That's right.

14:37:17 11 Q And they don't have to be built to be a murder
14:37:18 12 weapon, right?

14:37:19 13 A Right.

14:37:19 14 Q It could have been an object that was around the
14:37:22 15 house for some other purpose that somebody used to kill
14:37:25 16 this poor lady?

14:37:26 17 A Yes.

14:37:27 18 Q Correct?

14:37:28 19 Or a rock, correct?

14:37:29 20 A Yes.

14:37:29 21 Q River rock we talked about.

14:37:30 22 This would be a good point for a break, your
14:37:32 23 Honor.

14:37:32 24 THE COURT: Okay.

14:37:33 25 MR. SEARS: Thank you.

14:37:34 1 THE COURT: We will take the afternoon recess,
14:37:35 2 Ladies and Gentlemen. Again please remember the
14:37:37 3 admonition.

14:37:38 4 Please be reassembled in the jury room at
14:37:43 5 3:00, about 20 minutes, and I am going to ask the parties
14:37:46 6 to remain, but, Dr. Fulginiti, you are excused at this
14:37:50 7 time for the recess.

14:37:51 8 THE WITNESS: Thank you.

14:37:53 9 (Whereupon, the jury left the courtroom.)

14:38:28 10 THE COURT: Thank you. Be seated.

11 (Short recess, after which the following proceedings
14:40:04 12 were held in the Court's chambers, to wit:)

14:40:04 13 THE COURT: Okay. We're in chambers with
14:40:09 14 Mr. Butner, Mr. Paupore present, and then all of the
14:40:13 15 defense attorneys as well.

14:40:14 16 Mr. Sears.

14:40:14 17 MR. SEARS: Your Honor, we waive our client's
14:40:16 18 presence, of course.

14:40:17 19 I think the first thing that Mr. Butner
14:40:20 20 wanted to talk about was the fact that for a number of
14:40:24 21 these witnesses, including this one, each side has their
14:40:27 22 own transcript and they don't match up in terms of pages.

14:40:32 23 MR. BUTNER: I would like to talk about that,
14:40:34 24 Mr. Sears.

14:40:34 25 MR. SEARS: I was just going --

14:40:35 1 MR. BUTNER: I can talk about that.

14:40:37 2 MR. SEARS: If you'd give me a chance to finish
14:40:39 3 my sentence.

14:40:39 4 I think Mr. Butner had an issue about that,
14:40:41 5 your Honor.

14:40:42 6 MR. BUTNER: That isn't the first thing I would
14:40:43 7 like to talk about. I thought we were here to talk about
14:40:45 8 Mr. Wagnon's juror issue.

14:40:47 9 THE COURT: Sorry. Number 13 -- is that the
14:40:49 10 number?

14:40:50 11 MR. BUTNER: I believe so. I am not --

14:40:51 12 THE COURT: I should have brought my chart in.

14:40:53 13 Okay. I mentioned that briefly to Joe and
14:40:58 14 Larry before the lunch. I thought we might just talk to
14:41:05 15 him and tell him -- you know, make sure he knows that we
14:41:08 16 have seen this. We are going to -- it doesn't seem to be
14:41:10 17 an issue today, but we'll go ahead and leave the blinds
14:41:17 18 low and let us know if there's any kind of problems.

14:41:22 19 Mr. Hammond.

14:41:23 20 MR. HAMMOND: Do you mind if I stand up for a
14:41:24 21 moment. I get down there and I think I am in never, never
14:41:28 22 land.

14:41:28 23 The point of concern that I expressed
14:41:35 24 earlier -- we had been told by the, I think it was
14:41:38 25 actually your bailiff who is sitting in for Phil, Heidi is

14:41:42 1 her name, that some jurors -- and I have no idea what
14:41:46 2 "some" meant -- had asked that we keep the window behind
14:41:53 3 the defense table open and someone used the words
14:41:58 4 claustrophobic and said we feel less claustrophobic or
14:42:02 5 words to that effect, and we said fine. If somebody wants
14:42:05 6 it open, it's fine. It does actually put a glare on the
14:42:08 7 computer screens on this side, but we said no problem at
14:42:14 8 all.

14:42:14 9 And so when I saw the note this morning from
14:42:22 10 Mr. Wagnon, one concern I had was that by accommodating
14:42:29 11 his request unbeknownst to us, we may be offending other
14:42:35 12 jurors, but at the same time, I didn't want us not to
14:42:41 13 respond to Mr. Wagnon. I mean his letter actually to me
14:42:44 14 was a little chilling when he ended it by saying if this
14:42:50 15 presents a problem for the Court, I understand and
14:42:52 16 respectfully request to be relieved from further jury duty
14:42:57 17 in this case.

14:42:58 18 I don't think any of us want to lose a juror
14:43:02 19 or have a juror think that something so important has
14:43:06 20 happened that he has to say if you can't accommodate me,
14:43:10 21 fine. If not, I'm out of here. It may just be the way he
14:43:13 22 wrote the letter and he may not have intended it the way I
14:43:17 23 read it.

14:43:18 24 But I would like us to be able to tell him
14:43:22 25 that we're sensitive to his concern and will understand

14:43:26 1 it, but I think we may also need to tell the other jurors
14:43:30 2 that we're attentive, as a group, we're attentive to all
14:43:35 3 of them and that if they have concerns about lighting or
14:43:40 4 about -- or about really anything in that courtroom, we
14:43:46 5 ought to know about it.

14:43:47 6 Just so we don't have an unintended
14:43:50 7 consequence by suddenly closing them. It seems silly when
14:43:56 8 I say it, but I think you can see the awkwardness of this.

14:44:02 9 THE COURT: I thought you were going to say,
14:44:04 10 because the note came to me in a sealed envelope, that
14:44:06 11 there is already a division out there among the people who
14:44:12 12 feel closed in if they don't --

14:44:16 13 MR. SEARS: I was hoping the jury wouldn't divide
14:44:18 14 along those lines.

14:44:19 15 THE COURT: I just wondered if that --

14:44:20 16 MR. SEARS: As suggested by Mr. Hammond.

14:44:22 17 MR. HAMMOND: -- actually wasn't -- I didn't see
14:44:24 18 it that way. But I guess that's a possibility which makes
14:44:29 19 me even more nervous.

14:44:31 20 THE COURT: Joe.

14:44:31 21 MR. BUTNER: I don't think they're dividing along
14:44:34 22 those lines either, but I do see that -- the concern. I
14:44:40 23 was concerned about losing Mr. Wagnon too, and of course I
14:44:43 24 think we should try and accommodate him.

14:44:45 25 I hadn't heard until this afternoon about

14:44:49 1 other jurors being claustrophobic as apparently reported
14:44:53 2 by bailiff Heidi, but I would think somehow we can
14:44:57 3 probably accommodate both sides of that situation, because
14:45:00 4 seems to me that the light that is bothering Mr. Wagnon is
14:45:05 5 the one that is basically straight across from the jury
14:45:08 6 box coming out of that window.

14:45:10 7 And there's this other window down at the
14:45:13 8 end there that can be left open to accommodate the
14:45:17 9 claustrophobic jurors, if there are such jurors. That is
14:45:21 10 what Phil had done. Phil thought that was a compromise.

14:45:24 11 You know, you could say that -- you could
14:45:26 12 say that unfortunately on really sunny days, at certain
14:45:29 13 times the sun comes in the window plus a glare on the
14:45:32 14 clerk's computer and our computers on this side or
14:45:35 15 something like that.

14:45:37 16 THE COURT: Okay. I thought we might bring
14:45:40 17 Mr. Wagnon or juror 13 in and just tell him what we are
14:45:44 18 doing and that I can just say in general at the end of the
14:45:47 19 day that -- I mean I am aware from having been in
14:45:50 20 courtroom a number of times in years past, that is a bad
14:45:54 21 glare. I have noticed that, and that it's disruptive for
14:45:58 22 some people and we're conscious of that. Just trying to
14:46:00 23 take care of --

14:46:01 24 MR. SEARS: Maybe you could ask him if he thought
14:46:02 25 he would be bothered if that window -- that goes into the

14:46:06 1 gallery, be the far left blinds were open on that, would
14:46:11 2 that be a problem for him?

14:46:13 3 THE COURT: Okay. I suggest -- go ahead.

14:46:15 4 MR. BUTNER: I'm sorry. And then also we can
14:46:18 5 consider the possibility of letting Mr. Wagnon move. He's
14:46:22 6 right in the dead center of the jury and if he were at an
14:46:25 7 angle, probably wouldn't be a problem for him. I'm
14:46:29 8 guessing, of course, but I think that might be the case.

14:46:32 9 THE COURT: On the real sunny days, it is not
14:46:34 10 comfortable for anybody looking towards that window though
14:46:36 11 from what I'm recalling.

14:46:39 12 MR. HAMMOND: He may also have a peripheral
14:46:41 13 vision problem, but because he's sighted in only one eye,
14:46:46 14 so maybe he's where he is advisedly.

14:46:52 15 THE COURT: So I guess we talk to him maybe in a
14:46:54 16 couple of minutes and then I will say something at the end
14:46:57 17 of the day just in generally about we're going to try and
14:47:00 18 keep the lighting situation so that it's convenient for
14:47:03 19 everyone the best we can.

14:47:04 20 Okay.

14:47:07 21 MS. CHAPMAN: Phil mentioned it was an issue and
14:47:10 22 we could move things around, so he knows that, too. When
14:47:13 23 he comes in, you can reaffirm that for him.

14:47:16 24 THE COURT: Okay. Part two.

14:47:19 25 MR. BUTNER: Part two is Mr. Sears is referring

14:47:22 1 to a transcript in cross-examination of Dr. Fulginiti and
14:47:28 2 I have a transcript, but apparently my transcript isn't in
14:47:31 3 the same order of pages and lines and so forth as
14:47:35 4 Mr. Sears.

14:47:35 5 And Mr. Sears mentioned when I pointed this
14:47:39 6 out to him, that theirs is proprietary in some fashion,
14:47:45 7 and my thinking was, well, if they are unwilling to supply
14:47:50 8 the State a copy of their transcript for that reason, then
14:47:53 9 I certainly would supply them a copy of my transcript --
14:47:57 10 and I am willing to do that anyway -- but I would like to
14:48:00 11 be able to refer to the same pages and lines that
14:48:03 12 Mr. Sears is referring to when he is cross-examining the
14:48:07 13 witness, or -- and I know it would be cumbersome and I
14:48:12 14 don't want him to do this, unless it's absolutely
14:48:14 15 necessary, but if we have -- if he could show at the same
14:48:16 16 time -- if he would show me what he is referring to then,
14:48:19 17 when he questions the witness, the page and line.

14:48:22 18 THE COURT: John.

14:48:23 19 MR. SEARS: This sort of began as a problem is
14:48:25 20 that over the course of the last two plus years, we have
14:48:28 21 gotten relatively few transcripts disclosed by the State
14:48:34 22 of interviews. The transcripts that we have gotten have
14:48:36 23 primarily been of our client and a few other people. But
14:48:41 24 I think -- and I think the State would have to agree --
14:48:44 25 that they have not disclosed to us every transcript that

14:48:46 1 they have and if I am wrong, then I'm wrong, but I don't
14:48:50 2 think that is true. For example, we don't have a
14:48:52 3 transcript of their transcript of my interview of
14:48:57 4 Dr. Fulginiti and there never was any agreement or
14:48:59 5 understanding.

14:48:59 6 We have paid considerable amounts of money
14:49:02 7 over time to have many things transcribed including the
14:49:07 8 thousands of jail calls and all of the other things that
14:49:10 9 the State has disclosed in an un-transcribed way.

14:49:14 10 And I can't predict -- for example, I will
14:49:17 11 tell you coming up we have Eric Gilkerson is going to be
14:49:20 12 on next week. We did a defense interview of Gilkerson.
14:49:24 13 We have our transcript of Gilkerson. I don't know whether
14:49:26 14 the State has a transcript of that same interview. They
14:49:29 15 were on the phone. We were in Virginia and they were
14:49:32 16 here. But that's an area where I am sure Gilkerson will
14:49:37 17 be cross-examined from a transcript of his defense
14:49:40 18 interview. You can count on that.

14:49:42 19 So I am open to suggestions. If the State
14:49:45 20 wants to disclose this. What we have done -- we have seen
14:49:46 21 this a couple of instances, not surprisingly -- given the
14:49:50 22 fact that there are different transcripts, I think, so
14:49:52 23 there have been some differences and sometimes some
14:49:54 24 terrible differences between the two transcripts. And so
14:49:58 25 I am not prepared and any more than I think State would be

14:50:01 1 prepared to concede one transcript or the other is the
14:50:04 2 accurate or the more accurate rendition of the person's
14:50:10 3 statements.

14:50:10 4 So I can show it to them. With experts, I
14:50:14 5 have a number of excerpts marked to finish with this
14:50:19 6 witness, and we can talk about what to do with witnesses
14:50:22 7 like Gilkerson. There are also lengthy interviews that
14:50:26 8 Ms. Chapman and Mr. Hammond did of some of these DNA
14:50:29 9 witnesses that are scheduled for next week and you can be
14:50:32 10 sure they would be questioned about those or impeached
14:50:35 11 with them if they testified differently.

14:50:39 12 THE COURT: Well, Rule 613 tells you what you
14:50:43 13 have to do if the other side wants to see the statement.

14:50:46 14 So it's got to be there --

14:50:49 15 MR. SEARS: What --

14:50:50 16 THE COURT: If there is a dispute over which is
14:50:51 17 accurate.

14:50:52 18 MR. SEARS: That's right.

14:50:52 19 THE COURT: It's very disruptive when those kind
14:50:55 20 of things come up. It really is. And that's one thing
14:51:00 21 prior disclosure can take care of. That's something that
14:51:02 22 an agreement as to splitting costs can take care of.
14:51:05 23 Various things like that. And to get into trial and just
14:51:08 24 have everything pinned down, wind down, stop...

14:51:12 25 MR. SEARS: We can disclose every transcript if

14:51:14 1 the State would give us a check for half of the cost.

14:51:16 2 MR. BUTNER: Well --

14:51:17 3 MS. CHAPMAN: And we have offered to do that and
14:51:18 4 have done that with respect to several transcripts.

14:51:21 5 MR. BUTNER: I was just going to say. It was my
14:51:23 6 understanding that we had done that along the way. I
14:51:26 7 don't know that we have done it in every instance.

14:51:28 8 But we haven't spent -- the State hasn't
14:51:32 9 spent as much money I think as defense in terms of getting
14:51:35 10 everything transcribed in this case.

14:51:36 11 And in some instances, this being I think
14:51:40 12 one of them, we were not presented with the option to my
14:51:44 13 knowledge of splitting the cost of transcription of this
14:51:48 14 witness' testimony. If I had been presented with that
14:51:52 15 option, I would have agreed to do that.

14:51:55 16 But we have done that at a number of points
14:51:59 17 in this case, and I just got the transcript today of this
14:52:04 18 witness' testimony. To my knowledge throughout this case,
14:52:09 19 we have disclosed our transcripts that were done by the
14:52:12 20 State to the defense. I am not aware of times we have not
14:52:15 21 done that. I certainly would have done that had I been
14:52:18 22 asked about that, and I thought it had been done.

14:52:25 23 THE COURT: Well, are you foreseeing some
14:52:27 24 definite issues coming up here soon? This wasn't a
14:52:31 25 problem in the first session.

14:52:33 1 MR. BUTNER: You know, there wasn't a problem
14:52:34 2 because they didn't say anything, Judge. I was trying to
14:52:36 3 find where he was at in the transcript that I had and I am
14:52:40 4 thinking their transcript has got to be different because
14:52:43 5 I am nowhere close to that and I can't seem to find what
14:52:45 6 he was talking about at page 59, for example.

14:52:48 7 MR. SEARS: And why the State would think we
14:52:51 8 would have their transcript if they just got it today is
14:52:54 9 hard to understand.

14:52:55 10 MR. BUTNER: Well, it was transcribed. It wasn't
14:52:58 11 provided to me interestingly enough.

14:53:02 12 MR. SEARS: I have no way of knowing that.

14:53:05 13 THE COURT: Well, for future witnesses, let's be
14:53:07 14 conscious of that and if possible to exchange -- if it's
14:53:11 15 possible to exchange transcripts and share costs. If
14:53:14 16 those incidents can be worked out in the future, then I
14:53:16 17 encourage that. For today we'll just have to move ahead.

14:53:19 18 MR. SEARS: The vast part of this work has been
14:53:21 19 done on these witnesses. The witnesses that are coming up
14:53:23 20 have all been interviewed as I am sure you're beginning to
14:53:26 21 see, we interviewed virtually every witness that they had
14:53:30 22 and the ones that weren't interviewed were the custodians
14:53:33 23 of record and things like that, but --

14:53:37 24 MR. BUTNER: And --

14:53:38 25 MR. SEARS: I'm sorry. I was going to say that,

14:53:40 1 you know, we have our transcripts. We have no way of
14:53:43 2 knowing either if the State has given us all the
14:53:46 3 transcripts or not. We know that just in general terms
14:53:49 4 there are many more witnesses who were interviewed than we
14:53:53 5 have State's transcripts for and we just don't know
14:53:55 6 whether that's because they haven't given them to us or
14:53:58 7 they haven't transcribed them. We just don't know.

14:54:01 8 MR. BUTNER: I will have a paralegal contact
14:54:03 9 their paralegal and make sure they have copies of our
14:54:05 10 transcripts.

14:54:06 11 But I also point out I think the situation
14:54:10 12 where the transcripts are being paid for with Public
14:54:14 13 Defender funds and that's taxpayer dollars, I think they
14:54:17 14 could share that with us. If they are not paid in that
14:54:20 15 fashion, then of course it's a different matter and I will
14:54:22 16 ask Mr. McGrane to arrange to write them a check for 50
14:54:26 17 percent, but I would like to get copies of those
14:54:29 18 transcripts.

14:54:31 19 MR. HAMMOND: Judge, I think we're about to
14:54:32 20 embark on a problem here. First of all, some of the
14:54:35 21 things that Mr. Butner said are things that we would not
14:54:38 22 respond to in any proceeding other than an ex parte
14:54:42 23 proceeding, but, secondly, the Court should understand I
14:54:45 24 think what I know that they understand. For virtually
14:54:50 25 every interview that both sides attended, and this is just

14:54:54 1 one example, but for every one of those interviews, there
14:54:59 2 were what lawyers laughingly sometimes call dueling
14:55:03 3 recorders. They brought a digital recorder and we brought
14:55:07 4 a digital recorder, and we did that for now the last, I
14:55:12 5 don't know, two years.

14:55:14 6 And throughout this process, to the extent
14:55:17 7 that they wanted to have their own transcript, they made
14:55:21 8 it. To the extent that we wanted to have a transcript, we
14:55:25 9 made it.

14:55:25 10 There have been some times when a
14:55:28 11 transcriber didn't work. Mr. Paupore I know recalls that
14:55:33 12 because he helped me out. I think at least a couple of
14:55:36 13 times when I had a recorder failure and we did work out on
14:55:42 14 those isolated instances making a CD available so that we
14:55:50 15 could then do our own recording from theirs.

14:55:55 16 But throughout this case, that's the way
14:55:57 17 it's been done. There were efforts very early on to see
14:56:02 18 if we could do it in a cooperative way and that didn't
14:56:05 19 work, and so we have gone through this whole case with our
14:56:08 20 own transcripts and our transcripts have actually been
14:56:15 21 read by people and summarized as part of our work product.

14:56:22 22 And so for us to now say, wait a minute, we
14:56:27 23 are not going to either use ours, we are going to use
14:56:31 24 theirs, which I think would throw our summaries off -- I
14:56:34 25 certainly wouldn't be prepared to start over. I don't

14:56:36 1 have enough time left in my lifetime to do that. This is
14:56:41 2 a problem that has been there all along. If there is some
14:56:45 3 particular thing that they don't have a record of, then we
14:56:51 4 can talk about it.

14:56:52 5 But I certainly don't want to have the Court
14:56:55 6 be under the impression that this is some kind of a
14:56:58 7 problem that can be solved today by -- by them just --
14:57:03 8 they have never given us transcripts of interviews both
14:57:06 9 sides have attended. I think I can say never. I don't
14:57:09 10 think anybody ever intended to do that. This is -- I mean
14:57:13 11 if Mr. Butner was under the impression that was happening,
14:57:17 12 I'm sure his staff will set him straight on this. They
14:57:20 13 have not done that at any point in this case.

14:57:24 14 So we are left with possible pagination
14:57:30 15 inconsistencies and possible recording and transcribing
14:57:35 16 inconsistencies, but we have had that from the beginning.

14:57:45 17 MR. BUTNER: Well, Judge, I know at least one
14:57:49 18 interview where Mr. Hammond was present and I think I
14:57:54 19 attended telephonically and I think that we shared the
14:57:57 20 cost of that interview somehow and I can't remember, I
14:58:01 21 think it was back in Georgia or some place like that, and
14:58:05 22 there may be more than one. But I just remember that one
14:58:08 23 offhand. This case is just -- Mr. Hammond is right. We
14:58:15 24 sure had these sorts of problems all along. Sometimes we
14:58:19 25 are able to get by them and handle them and sometimes we

14:58:22 1 are not.

14:58:22 2 MR. HAMMOND: I don't think we have ever had a
14:58:24 3 time though in which they have asked us for a copy of the
14:58:30 4 transcript that we haven't given it to them in exchange
14:58:33 5 for them paying half of the cost that we incurred. If
14:58:39 6 that is what they are saying, that they want to just pay
14:58:42 7 half for any transcript that we have, that's -- I don't
14:58:48 8 know. Ann, maybe you can respond to that. I don't think
14:58:50 9 there has ever been --

14:58:51 10 MS. CHAPMAN: I don't think there ever been a
14:58:53 11 time. I know we have done this a couple of occasions and
14:58:55 12 that is how it has worked out.

14:58:57 13 MR. BUTNER: Isn't there a time or two when we
14:58:59 14 have paid half?

14:59:00 15 MS. CHAPMAN: Yes. When you have asked for them
14:59:02 16 and you have paid half, we have given them to you.

14:59:04 17 MR. BUTNER: Yeah. So there has been sometimes
14:59:07 18 when we have.

14:59:08 19 MR. HAMMOND: There has. I wasn't ever
14:59:10 20 suggesting that there haven't been.

14:59:12 21 MS. CHAPMAN: We have never been provided them by
14:59:14 22 you.

14:59:18 23 THE COURT: As with -- go ahead.

14:59:20 24 MR. BUTNER: That may be true. You know, I can't
14:59:23 25 dispute that at this point in time. I certainly would be

14:59:26 1 willing to provide you any transcripts that I have and
14:59:30 2 will continue to be in that position. I wasn't trying to
14:59:33 3 keep them from you in any fashion. I know we have
14:59:36 4 provided you transcripts of the interviews of your client.
14:59:39 5 That's for certain. So I guess that's a fairly obvious
14:59:44 6 example, but I guess then if we can't get this worked out,
14:59:53 7 it sounds like we are not going to be able to, that I
14:59:55 8 would have to look specifically how Rule 613 reads, but I
14:59:59 9 think then they need to be able to show me the transcript
15:00:02 10 as we proceed in this fashion.

15:00:05 11 THE COURT: As with the witness list issue we
15:00:09 12 talked about yesterday, I will just encourage cooperation.
15:00:15 13 I know I have not been around the case very long and there
15:00:18 14 is a lot of history. I referred it to as background
15:00:21 15 yesterday, and I am aware of that. But I will just
15:00:23 16 encourage cooperation and for today, if there's going to
15:00:31 17 be some type of impeachment with a statement or showing of
15:00:34 18 a statement, the other side gets to see it and it's just
15:00:38 19 going to make things run slowly and that's not good to
15:00:42 20 have things tied up and people are fumbling around trying
15:00:47 21 to find the page.

15:00:48 22 MR. SEARS: Maybe put it up on Elmo. Put them up
15:00:51 23 on the Elmo.

15:00:52 24 MR. HAMMOND: Maybe I wasn't clear enough.

15:00:54 25 MR. BUTNER: That would be fine to put it up on

15:00:56 1 the Elmo.

15:00:56 2 MR. HAMMOND: If --

15:00:57 3 MR. BUTNER: Sure.

15:00:58 4 MR. HAMMOND: On any transcript that they have
15:01:02 5 ever wanted of ours and I don't know how many that we have
15:01:05 6 done so far, but if they want to give us a list of the
15:01:11 7 transcripts of ours, of the interviews that we did
15:01:14 8 together and if they're willing to pay for half of what we
15:01:19 9 paid, we will send them to them. We will send them an
15:01:23 10 invoice and they can pay for them and we'll get them to
15:01:27 11 them and that way you won't have this issue at all.

15:01:32 12 But we are not going to -- I wouldn't be
15:01:35 13 prepared to think about doing it any other way.

15:01:39 14 THE COURT: Okay. I would like to bring juror 13
15:01:42 15 in for a minute and then Sandi and Heather, everybody will
15:01:45 16 need a bit of a break.

15:02:26 17 (Whereupon, Juror 13 entered the Court's
15:02:32 18 chambers, to wit:)

15:02:51 19 THE COURT: Hello, sir. If you could just please
15:02:54 20 have a seat right there.

15:02:57 21 THE BAILIFF: That is something else. Not about
15:02:58 22 the case I am told.

15:03:00 23 THE COURT: Okay. Record should show we have the
15:03:04 24 attorneys present and juror number 13. We use numbers as
15:03:07 25 you know.

15:03:07 1 I did get your note and it appears maybe
15:03:13 2 today it's not been an issue yet because of the weather.
15:03:17 3 I just wanted to assure you we are very concerned and
15:03:20 4 we're going to take care of that.

15:03:21 5 I know from past experience glare is really
15:03:27 6 disturbing. It comes in in the afternoon at certain times
15:03:32 7 of the year anyway and it actually disrupts people, you
15:03:38 8 know, working with computers on that side as well.

15:03:40 9 What I was thinking, Mr. Wagnon, is the way
15:03:47 10 to go might be if we could -- is it just the one right
15:03:52 11 next to the clerk's station there, right behind there? Is
15:03:56 12 that where it is or all along the wall?

15:03:58 13 JUROR: No. The window that is behind the
15:04:03 14 defense table, not the window that's at the far end of the
15:04:08 15 Court.

15:04:08 16 THE COURT: Okay.

15:04:09 17 JUROR: Just when the blinds are partly closed,
15:04:13 18 the sun comes in and the glare hits them and comes out.

15:04:15 19 THE COURT: When the blind's at a certain angle
15:04:17 20 and --

15:04:17 21 JUROR: Yeah. As the sun moves across, that
15:04:20 22 angle changes. Earlier in the year, the sun was higher
15:04:26 23 and -- but it's getting to be where it's more constant and
15:04:33 24 after lunch and so, if the blinds are closed, then there
15:04:38 25 is no problem.

15:04:39 1 THE COURT: The window in the back?

15:04:40 2 JUROR: The window in the back doesn't bother me
15:04:43 3 at all.

15:04:43 4 THE COURT: Okay. That is what we're going to go
15:04:45 5 ahead and try, but do exactly what you did before. If
15:04:48 6 there are any issues, let us know and we will address it.

15:04:51 7 JUROR: Appreciate that.

15:04:52 8 THE COURT: Okay. Thank you. We will start up
15:04:54 9 as soon as we can.

15:04:56 10 (Whereupon, Juror 13 left the Court's chambers.)

15:05:05 11 MS. CHAPMAN: Was there some other issue Phil
15:05:07 12 brought in or not about this?

15:05:09 13 THE COURT: Oh. He did hand me something.

15:05:20 14 Well, just -- you never know. Who wants to
15:05:23 15 read it first.

15:06:45 16 Do you want to address this now? We
15:06:47 17 certainly have to take it up at some point.

15:06:50 18 MR. BUTNER: That's a jury instruction. You may
15:06:52 19 consider the witness' demeanor when testifying and so on.

15:06:56 20 MR. SEARS: It's a jury instruction. That's
15:06:58 21 exactly right.

15:06:59 22 But it may be that that juror wants to ask
15:07:04 23 the witness that kind of a question is what it looks like
15:07:09 24 to me, also.

15:07:10 25 So I mean I don't think it's appropriate

15:07:11 1 that the Court or counsel answer that question, but it
15:07:15 2 might be necessary for the witness to answer that
15:07:18 3 question.

15:07:21 4 MS. CHAPMAN: Question of law. The question is
15:07:22 5 can they consider.

15:07:26 6 MR. BUTNER: We have had some other questions of
15:07:27 7 law asked, I think, of witnesses.

15:07:30 8 THE COURT: While we are on the record here, I
15:07:32 9 will note with counsel present, are we going to get to
15:07:36 10 jury questions today? To this -- for this witness?

15:07:40 11 MR. SEARS: I don't have a huge amount of
15:07:42 12 additional cross-examination of this witness.

15:07:46 13 THE COURT: Because I just think it's something
15:07:47 14 to address after this witness is excused. I need to say
15:07:50 15 something just in a very general sense.

15:07:54 16 MR. SEARS: You could read the RAJI on witness
15:07:57 17 credibility. It's pretty short.

15:08:01 18 MS. CHAPMAN: Just wondering if that instruction
15:08:03 19 was included with the preliminary instructions. I could
15:08:05 20 take a look because I have them here and I could let you
15:08:08 21 know.

15:08:08 22 THE COURT: I don't have mine here.

15:08:09 23 MR. BUTNER: I don't think it was.

15:08:11 24 MS. CHAPMAN: You do not?

15:08:12 25 MR. BUTNER: I don't. I don't think it was. I

15:08:14 1 don't think that was one of the usual preliminary times.

15:08:16 2 THE COURT: Manner while testifying. Really?

15:08:21 3 MR. BUTNER: I don't think so.

15:08:21 4 THE COURT: That should.

15:08:22 5 MR. BUTNER: Not like the usual expert type

15:08:24 6 instruction.

15:08:25 7 MS. CHAPMAN: I can look easily. I can go look

15:08:27 8 and provide the answer.

15:08:29 9 THE COURT: We will take this up, but it needs to

15:08:33 10 be done sooner rather than later, but I think it can be

15:08:36 11 done after.

15:08:37 12 MR. SEARS: I wasn't going to, but I could

15:08:39 13 display it. There was a question that I asked her and her

15:08:41 14 answer in the defense interview was bite me. Maybe that

15:08:44 15 would help the juror understand whether she is prejudiced

15:08:47 16 or not.

15:08:50 17 THE COURT: We will start up here.

15:08:53 18 MR. BUTNER: Along those lines though, Judge, and

15:08:55 19 not really along those lines, but I don't have another

15:08:59 20 witness scheduled unless I call somebody right now and I

15:09:04 21 have to give him an hour's notice or so to get him here.

15:09:10 22 MR. SEARS: It's ten minutes after 3:00.

15:09:11 23 MR. BUTNER: Right. And so I am wondering.

15:09:14 24 THE COURT: I think --

15:09:15 25 MR. SEARS: I suggest another 30 minutes at most.

15:08:14 1 don't think that was one of the usual preliminary times.

15:08:16 2 THE COURT: Manner while testifying. Really?

15:08:21 3 MR. BUTNER: I don't think so.

15:08:21 4 THE COURT: That should.

15:08:22 5 MR. BUTNER: Not like the usual expert type

15:08:24 6 instruction.

15:08:25 7 MS. CHAPMAN: I can look easily. I can go look

15:08:27 8 and provide the answer.

15:08:29 9 THE COURT: We will take this up, but it needs to

15:08:33 10 be done sooner rather than later, but I think it can be

15:08:36 11 done after.

15:08:37 12 MR. SEARS: I wasn't going to, but I could

15:08:39 13 display it. There was a question that I asked her and her

15:08:41 14 answer in the defense interview was bite me. Maybe that

15:08:44 15 would help the juror understand whether she is prejudiced

15:08:47 16 or not.

15:08:50 17 THE COURT: We will start up here.

15:08:53 18 MR. BUTNER: Along those lines though, Judge, and

15:08:55 19 not really along those lines, but I don't have another

15:08:59 20 witness scheduled unless I call somebody right now and I

15:09:04 21 have to give him an hour's notice or so to get him here.

15:09:10 22 MR. SEARS: It's ten minutes after 3:00.

15:09:11 23 MR. BUTNER: Right. And so I am wondering.

15:09:14 24 THE COURT: I think --

15:09:15 25 MR. SEARS: I suggest another 30 minutes at most.

15:23:58 1 case, it's important to keep an open mind about what
15:24:03 2 possibilities there are in the world and I think testing
15:24:07 3 other objects was a way of maybe honing in on what the
15:24:11 4 implement might have been.

15:24:13 5 Q The idea as part of your scientific method would
15:24:17 6 be to rule in certain objects and rule out objects, right?

15:24:20 7 A Yes.

15:24:21 8 Q And you have told us the kind of objects you
15:24:23 9 ruled out. For example, a ball-peen hammer because it
15:24:26 10 made that round precise circular impression and you in
15:24:31 11 your mind could rule that out as being the cause of this
15:24:35 12 fracture on the right side of Carol's head, correct?

15:24:37 13 A Yes.

15:24:38 14 Q But then when you start talking about ruling in
15:24:40 15 objects, do you remember a discussion you had with me in
15:24:43 16 March about the Home Depot?

15:24:48 17 A Yes.

15:24:48 18 Q Okay. Okay. And I think what happened was I
15:24:52 19 suggested to you that you could go to a place like a Home
15:24:56 20 Depot and possibly see all different kind of objects or
15:25:01 21 instruments that might cause these kinds of injuries, and
15:25:06 22 do you remember what you said?

15:25:07 23 A Specifically?

15:25:08 24 Q Do you remember what you described? You said you
15:25:11 25 took a visit to the Home Depot and do you remember what

15:25:13 1 you called it?

15:25:14 2 **A** I called it the wall of death.

15:25:16 3 **Q** And what did you mean by the wall of death?

15:25:20 4 **A** I think I was referring to Sears and I said Sears
15:25:22 5 has an awesome wall of death.

15:25:25 6 **Q** Did you -- and I wasn't sure whether you were
15:25:27 7 talking about me or the department store.

15:25:29 8 **A** Oh, wow. See. I was actually discussing the
15:25:35 9 department store, but now that you mention it...

15:25:38 10 **Q** What you said --

15:25:42 11 **A** I had a case where I had these very round defects
15:25:47 12 that actually had a little edge on them and I referred to
15:25:50 13 that as a bevel around the edge. So it's like a hole and
15:25:53 14 then it has an extra line and I thought, well, it must be
15:25:56 15 easy to go to Home Depot or Sears or Ace Hardware and look
15:25:59 16 at the implements that are available and look and say, ah
15:26:03 17 ha, it must be that or it must be that.

15:26:05 18 And when I got there, Sears has this wall of
15:26:09 19 hammers. Every single one had a bevel. They were all
15:26:12 20 different. They were different shapes and sizes and I
15:26:15 21 just sort of ran away screaming saying, okay, the wall of
15:26:18 22 death is not the answer. So that's what I meant by that.

15:26:22 23 **Q** In a serious way though, we had talked about
15:26:27 24 primarily objects that are readily available. Things that
15:26:31 25 we know about. Crowbars, hammers, golf clubs. And then

15:26:35 1 we talked about homemade objects.

15:26:36 2 But a place like Sears and Roebuck or Home
15:26:40 3 Depot would be an example of a place that would have in
15:26:44 4 one area all kinds of objects that would meet your basic
15:26:48 5 criteria for having caused these injuries, right?

15:26:51 6 A Yes.

15:26:51 7 Q In terms of heft and weight, for example, right?

15:26:55 8 A Yes.

15:26:56 9 Q Some of them might be tools, might be garden
15:26:58 10 implements, correct?

15:26:59 11 A Yes.

15:27:00 12 Q There might be pieces of wood or metal that under
15:27:03 13 certain circumstances could be used to cause these kind of
15:27:07 14 injuries, right?

15:27:08 15 A Yes.

15:27:09 16 Q And then you don't have to go into a store. If
15:27:11 17 it were a river rock, those river rocks could be almost
15:27:14 18 anyplace, right?

15:27:14 19 A Right.

15:27:15 20 Q And have you ever seen pictures of the crime
15:27:18 21 scene in this case of the outside of the house?

15:27:19 22 A I have not.

15:27:20 23 Q So you wouldn't know if there just happened to be
15:27:22 24 river rocks all around?

15:27:23 25 A I don't.

15:27:24 1 Q You and I had some additional conversations back
15:27:35 2 in March, though. I want to pick up again with you here
15:27:37 3 today about different kind of scenarios that involved this
15:27:42 4 concept of impact versus -- and I really don't have a
15:27:45 5 better word for this -- versus a blow from an object. Is
15:27:50 6 that a fair point/counter point? You have impact and then
15:27:55 7 within the range of impacts, you have blows from an
15:27:57 8 object?

15:27:57 9 A Yes.

15:27:58 10 Q Okay. And what we had talked about was the fact
15:28:02 11 you have seen some crime scene photos of Carol Kennedy
15:28:06 12 lying on the floor in her home, correct?

15:28:08 13 A Yes.

15:28:08 14 Q And you have seen how she was positioned, right?

15:28:11 15 A If you have a photo, it would be helpful for me
15:28:15 16 to look at it.

15:28:15 17 Q We will get one out here. The problem is,
15:28:17 18 Doctor, we have been displaying those because of the
15:28:19 19 graphic nature, we have taken that screen out here and we
15:28:22 20 have set that up, but we could do that.

15:28:23 21 But I can tell you generally that she was
15:28:27 22 found lying on the floor mostly on her right side with her
15:28:32 23 right arm under her body and the right side of her face
15:28:36 24 down, so you could see the left side of her face and her
15:28:39 25 legs were crossed in a particular way.

15:28:41 1 Does that help you remember what was in the
15:28:42 2 photographs?

15:28:43 3 A Yes.

15:28:43 4 Q But the point that I am particularly interested
15:28:46 5 for your work is the fact that she was found lying on one
15:28:50 6 side of her face. She wasn't face up or face down. She
15:28:52 7 had her right side down and left side of her face up.

15:28:56 8 Do you remember seeing those pictures?

15:28:57 9 A Yes.

15:28:58 10 Q Okay. Now, we had talked about the fact that the
15:29:03 11 room she was in had carpeting not terribly unlike this
15:29:06 12 carpeting with a cement slab under that.

15:29:10 13 If she were lying with her right side of her
15:29:13 14 head on a carpeted cement slab and a powerful force was
15:29:20 15 applied to the left side, for example one that would cause
15:29:23 16 all these terrible comminuted fractures that we have seen
15:29:26 17 on the left side, is it possible that she had a
15:29:28 18 transferred fracture on the right side of her face from
15:29:32 19 being in that position?

15:29:33 20 A Yes.

15:29:33 21 Q Okay. And would that -- now, the problem is, you
15:29:37 22 talked about focal points. Okay. And focal points I
15:29:41 23 think when we were talking about them here today, had to
15:29:43 24 do with these chips that are missing, these little chips
15:29:46 25 of bone that are missing out and the difficulty in finding

15:29:50 1 a surface that would account for that, right?

15:29:52 2 **A** It's partly that and partly the convergence of
15:29:55 3 the fractures where they come together.

15:29:57 4 **Q** Okay. Now, do you remember that when we were
15:29:59 5 talking -- I think we may have even looked at some
15:30:01 6 pictures -- but I told you that there were -- there was a
15:30:05 7 piece of desk corner molding that -- and the jury has seen
15:30:10 8 this -- that comes off the corner of the desk and she
15:30:12 9 was -- do you remember she was in front of her desk?

15:30:15 10 **A** Yes.

15:30:15 11 **Q** Okay. And there was -- I know you remember the
15:30:17 12 blood that was on the desk, right?

15:30:19 13 **A** Yes.

15:30:19 14 **Q** Okay. And there was a piece of molding that had
15:30:21 15 come off and that molding was on the ground very near her
15:30:26 16 arm and head and had blood on it in the pictures.

15:30:29 17 Do you remember seeing that?

15:30:30 18 **A** I don't, but I remember you telling me about it.

15:30:32 19 **Q** Okay. Now, this was -- you asked me some
15:30:34 20 questions about this molding and Mr. Robertson and gave
15:30:37 21 you some details that it was -- it was particle board and
15:30:40 22 it was a quarter round and it did have one straight edge
15:30:43 23 on it that you could see, because he and I have looked at
15:30:47 24 it, and we talked about whether or not that might be a
15:30:50 25 focal point if at some point her head had been lying

15:30:55 1 against that molding rather than just on the floor.

15:30:58 2 Do you remember talking about that?

15:30:59 3 A Yes.

15:30:59 4 Q And would that be an example of a kind of
15:31:02 5 focussed focal point that might account possibly even for
15:31:05 6 a chip on the right side?

15:31:07 7 A Conceivably if her head was laying on it just --
15:31:12 8 just at -- my understanding of it is that's it's a long
15:31:15 9 piece, right?

15:31:17 10 Q It's the height of a desk.

15:31:17 11 A So the focal point would be at the edge of it
15:31:20 12 where it actually drops off. That's the focus?

15:31:23 13 Q Right.

15:31:26 14 A So conceivably, yes.

15:31:26 15 Q And then we talked about the surface of the desk
15:31:29 16 and if you remember on the top of the desk if you were
15:31:31 17 looking at the desk this way, about where these blue
15:31:34 18 folders were, there was a great deal of blood pooled up on
15:31:37 19 the top of the desk.

15:31:38 20 Do you remember seeing those pictures?

15:31:39 21 A Vaguely, yes.

15:31:42 22 Q But would that be an example, for example, if her
15:31:44 23 head had been against the desk, right side of her head
15:31:49 24 against the desk and a blow or blows had been struck with
15:31:52 25 something to the left side of her face, could that hard

15:31:55 1 surface of the desk be similar to the floor in terms of
15:32:00 2 providing resistance to create fractures on the side that
15:32:03 3 was down?

15:32:04 4 **A** Yes.

15:32:05 5 **Q** Okay. And what about the corners of the desk?
15:32:08 6 Dr. Keen has offered some opinions about the corners of
15:32:12 7 the desk and the first thing I want to ask you -- you have
15:32:15 8 talked a lot about this fracture that was over the left
15:32:19 9 eye and it was a patterned fracture, right?

15:32:21 10 **A** No. No. It's a point of impact. So it's a plus
15:32:26 11 shape, and it just means that's a place where the
15:32:28 12 fractures come together where you can say that's the point
15:32:30 13 of impact.

15:32:31 14 **Q** Okay. And there's been discussion in this case
15:32:34 15 from other people about the possibility that Carol had
15:32:38 16 either fell or was thrown against the desk face first.

15:32:42 17 You can't rule that out, right?

15:32:44 18 **A** No.

15:32:44 19 **Q** Mr. Butner even asked you today questions about
15:32:48 20 the injuries. You had the La Fort fracture and you had
15:32:51 21 some of these other fractures of the bones in the face
15:32:56 22 below the eye and above the jaw that might have been
15:33:00 23 caused by a face first impact, correct?

15:33:02 24 **A** Yes.

15:33:04 25 **Q** And she had black eyes and a fracture across her

15:33:06 1 nose, correct?

15:33:07 2 A I believe so.

15:33:08 3 Q But as you said, she didn't have any jaw
15:33:11 4 fracture. None of her teeth were broken?

15:33:13 5 A Were chipped, yeah.

15:33:14 6 Q So it may be the top part of her head had been
15:33:17 7 pushed into the desk, right?

15:33:18 8 A The top part of her face.

15:33:21 9 Q I'm sorry. Face. Yes.

15:33:22 10 A Yes.

15:33:22 11 Q From this area more or less up?

15:33:24 12 A Yes.

15:33:25 13 Q Okay. There's no way to know, is there, whether
15:33:30 14 those injuries -- and I think doctor, if not Dr. Keen,
15:33:34 15 somebody else has said that there's really three time
15:33:36 16 periods. There's antemortem, right?

15:33:39 17 A Yeah.

15:33:39 18 Q What does that mean?

15:33:40 19 A It means there's some evidence of healing in the
15:33:42 20 injury.

15:33:43 21 Q So it's before death?

15:33:44 22 A Before death.

15:33:44 23 Q Okay. Then there's post-mortem which is --

15:33:46 24 A After.

15:33:47 25 Q -- after death and then there is this area in

15:33:50 1 between called perimortem, right?

15:33:52 2 **A** Yes.

15:33:53 3 **Q** Which means?

15:33:53 4 **A** Around the time of death.

15:33:55 5 **Q** That's kind of a vague term?

15:33:56 6 **A** Yes.

15:33:57 7 **Q** Could be a little more, a little after, right?

15:33:58 8 **A** Yes.

15:33:59 9 **Q** And death -- in your line of work, how do you
15:34:02 10 define death?

15:34:03 11 **A** I am not sure that I'm properly qualified to
15:34:08 12 answer that question.

15:34:09 13 **Q** You think it's a medical term?

15:34:10 14 **A** Yes.

15:34:13 15 **Q** And so you don't typically render opinions about
15:34:16 16 whether injuries are ante, peri or postmortem?

15:34:20 17 **A** I do, but it has a different meaning than the
15:34:22 18 medical examiner.

15:34:23 19 **Q** What is your meaning?

15:34:24 20 **A** An antemortem injury, the biggest difference is
15:34:27 21 that with soft tissue, it responds very quickly to
15:34:29 22 injuries. So their windows of antemortem, perimortem and
15:34:33 23 postmortem are better defined and usually narrower.

15:34:37 24 With bone, bone takes longer to respond to
15:34:40 25 being injured, so you don't see it as quickly. So a

15:34:43 1 perimortem injury for me is something that doesn't have
15:34:47 2 any degree of healing, but the healing process can take
15:34:50 3 seven, ten, two weeks, seven to ten days, two weeks
15:34:53 4 depending on the person.

15:34:54 5 So the perimortem window is much larger.

15:34:58 6 Q And then post postmortem?

15:35:01 7 A Postmortem is like if a skeleton is out in the
15:35:03 8 desert and the coyotes chew on it or the cows walk on it
15:35:06 9 or --

15:35:08 10 Q You know those when you see them?

15:35:10 11 A Yes.

15:35:10 12 Q I have had those cases, too.

15:35:11 13 A Yes.

15:35:12 14 Q So in this particular case, because we're dealing
15:35:19 15 with events that may have occurred in a relatively short
15:35:22 16 period of time, this attack on this lady may have only
15:35:26 17 taken a relatively brief period of time from beginning to
15:35:29 18 end, right?

15:35:29 19 A Can you define relatively brief?

15:35:32 20 Q A second?

15:35:33 21 A I mean, are we talking hours, minutes?

15:35:35 22 Q I don't know. Do you have an opinion?

15:35:37 23 A No.

15:35:38 24 Q It's certainly more than a few seconds given the
15:35:43 25 number of fractures?

15:35:44 1 **A** I would think so, although -- what do I think.
15:35:57 2 Certainly within a couple of minutes you could create that
15:35:59 3 much damage.

15:36:01 4 **Q** And, of course, if you had multiple attackers
15:36:03 5 with multiple weapons, the time to inflict those injuries
15:36:06 6 would shrink accordingly, correct?

15:36:08 7 **A** I believe so, yes.

15:36:09 8 **Q** And you wouldn't have the ability from the
15:36:15 9 anthropological work that you did to do anything in terms
15:36:18 10 of sequencing the events other than the opinions you have
15:36:22 11 given about some of these fractures being early in the
15:36:25 12 event, right?

15:36:26 13 **A** Right.

15:36:26 14 **Q** And the event is the way you describe the attack
15:36:29 15 from the beginning to end?

15:36:30 16 **A** Right.

15:36:31 17 I think attack is sort of a pejorative word.
15:36:33 18 It's heavy with meaning, so event is less emotional maybe.

15:36:38 19 **Q** I agree. I agree.

15:36:39 20 And whatever this was, it was emotional and
15:36:43 21 horrible and unthinkable, right?

15:36:45 22 **A** It was, but I can't do my work if I think about
15:36:48 23 that.

15:36:48 24 **Q** No. And I wonder sometimes how you can do your
15:36:51 25 work though?

15:36:51 1 **A** I wonder every day.

15:36:53 2 **Q** I wonder though about the idea that these facial
15:37:01 3 injuries were inflicted when she was conscious or
15:37:06 4 unconscious. Is that anything that a forensic
15:37:09 5 anthropologist can offer opinions about?

15:37:11 6 **A** Okay. That's two different questions. You
15:37:14 7 started by intimating that she was either conscious or
15:37:17 8 unconscious.

15:37:17 9 **Q** Yes.

15:37:18 10 **A** In general terms, there may be a situation where
15:37:22 11 you would have somebody injured and time elapses before
15:37:25 12 they died and you would see some response from the bone.
15:37:28 13 In that situation, a forensic anthropologist could opine
15:37:31 14 about that.

15:37:32 15 In this case, no.

15:37:34 16 **Q** Because it was a relatively short event?

15:37:36 17 **A** Yes.

15:37:36 18 **Q** It didn't take hours or days or weeks?

15:37:40 19 **A** It didn't take days or weeks.

15:37:42 20 **Q** Now, when you and I were talking about this in
15:37:53 21 March, we were talking about scientific opinions again and
15:37:59 22 I will be happy to show you, Mr. Butner, where I am
15:38:02 23 looking at in my transcript. I am looking at page 139 if
15:38:05 24 you want to join me.

15:38:07 25 MR. BUTNER: Thank you.

15:38:16 1 MR. SEARS: Your Honor, what we're trying to do
15:38:17 2 is each side has their own transcript and they don't match
15:38:21 3 up, so I am trying to find a way to --

15:38:23 4 MR. BUTNER: Thank you, sir.

15:38:23 5 MR. SEARS: Let the State know what it is I am
15:38:25 6 doing.

15:38:26 7 Q You and I were talking and I said at page 139 of
15:38:32 8 my transcript, line seven:

15:38:33 9 And they're not -- no one, I assume, would
15:38:36 10 have an appropriate scientific opinion looking at the
15:38:39 11 skull whether they're a forensic pathologist or a forensic
15:38:42 12 anthropologist, that would say one object and one object
15:38:47 13 only caused every single fracture?

15:38:49 14 Of course I was talking about this case. Do
15 15 you remember that?

15:38:52 16 A Yes.

15:38:52 17 Q And you said a very careful scientist would not
15:38:56 18 opine that.

15:38:56 19 And I said such as yourself?

15:38:58 20 And you said such as myself.

15:39:00 21 Okay. And that was your opinion then and
15:39:02 22 that would be your opinion today, correct?

15:39:04 23 A Yes.

15:39:04 24 Q So you can't restrict yourself to the idea that a
15:39:09 25 Callaway Big Bertha Steelhead 3 Number 7 Fairway wood

15:39:13 1 caused every observable injury on this woman's skull, can
15:39:17 2 you?

15:39:17 3 A I'm sorry. You said I can't restrict myself to
15:39:20 4 that opinion?

15:39:21 5 Q Yes.

15:39:21 6 A That the golf club caused every injury?

15:39:24 7 Q Yes, ma'am.

15:39:25 8 A Stated that way, no, I cannot restrict myself.

15:39:27 9 Q Later at page 147 of my transcript, we were
15:39:37 10 talking about the shape of fractures and I said in part at
15:39:53 11 line 14, sometimes the fractures take the shape of the
15:39:56 12 object and sometimes they don't.

15:39:59 13 And your answer was correct.

15:40:02 14 Okay. This is something we talked about
15:40:03 15 just today again, correct?

15:40:05 16 A Yes.

15:40:05 17 Q And that's true again today, isn't it?

15:40:07 18 A Yes, it is.

15:40:08 19 Q And so the idea that you saw this -- this
15:40:13 20 patterned fracture on the right side of her head suggests
15:40:16 21 to you an object and a particular kind of object so that
15:40:19 22 you can't rule out a golf club, but you would agree with
15:40:22 23 me that it is possible that that shaped fracture is not
15:40:26 24 the result of being -- the skull being struck by an object
15:40:31 25 of the same shape, correct?

15:40:34 1 **A** I'm sorry. I lost track of your question halfway
15:40:37 2 through.

15:40:37 3 **Q** I did. I got a little sideways there.

15:40:38 4 Okay. You said sometimes the fractures take
15:40:42 5 the shape of the object and sometimes they don't, correct?

15:40:43 6 **A** Yes.

15:40:44 7 **Q** And would it also be fair to say that if you have
15:40:47 8 a fracture that has a shape like this one, this fracture
15:40:51 9 on the right side, that it does not automatically mean
15:40:55 10 that fracture was caused by impact with a similarly shaped
15:40:59 11 object, does it?

15:41:00 12 **A** Not automatically mean that it is not caused.
15:41:06 13 So, in other words, it could have been impacted -- rather
15:41:09 14 than the object impacting the skull, the skull could have
15:41:12 15 impacted something with that shape and still had the same
15:41:15 16 fracture?

15:41:16 17 **Q** Or could it be an example of what you told us now
15:41:19 18 a couple of times is possible, which is it's a curvilinear
15:41:23 19 fracture caused by a noncurvilinear object?

15:41:26 20 **A** That particular fracture? I am not as happy with
15:41:33 21 that. I agree with you that in principle you can have a
15:41:35 22 curved fracture from a non-curved implement. That
15:41:39 23 particular fracture looks to me like a patterned injury
15:41:42 24 that is mimicking either the object that struck it or an
15:41:46 25 object that it struck.

15:41:48 1 Q Would you think that a reasonable forensic
15:41:51 2 anthropologist might disagree with that opinion?

15:41:53 3 A They could, certainly.

15:41:55 4 Q Because as much as forensic anthropology is a
15:41:59 5 science, there is some art to it, isn't it there?

15:42:02 6 A There's opinion.

15:42:02 7 Q And the opinion is unique to the observer,
15:42:07 8 correct?

15:42:07 9 A Yes. And the experience of the observer. I mean
15:42:10 10 I have seen a lot, so I kind of -- I rely upon my own sort
15:42:15 11 of Rolodex of injuries if you want to think of it that
15:42:18 12 way.

15:42:18 13 Q But if another forensic anthropology expert with
15:42:21 14 different experiences and different observations took a
15:42:26 15 different view, that's just the way science goes?

15:42:29 16 A That's correct. Yeah.

15:42:30 17 Q And when you present your papers to a group like
15:42:33 18 the American Academy, you're doing that because that's the
15:42:36 19 way to get peer review from other forensic anthropologists
15:42:40 20 of your work and your opinions, correct?

15:42:42 21 A Yes.

15:42:42 22 Q And peer review sometimes can take the form of
15:42:44 23 criticism of either your opinions or your methods, right?

15:42:47 24 A Yes.

15:42:48 25 Q That's what you are trying do?

15:42:50 1 **A** I don't know if it's -- you're trying to get peer
15:42:53 2 review so that you can become better, but I don't know if
15:42:56 3 you want -- like you are going there thinking, oh, I am
15:42:58 4 going to get my bottom handed to me. I don't think you're
15:43:00 5 really thinking about that, but -- but, yeah. Yes, in
15:43:05 6 principle what you're saying is correct. That's
15:43:07 7 scientific methods.

15:43:07 8 **Q** I think that is what lawyers do. I think lawyers
15:43:10 9 walk in --

15:43:10 10 **A** Expecting to have their bottoms.

15:43:12 11 **Q** Sometimes. Sometimes.

15:43:13 12 **A** I hope that I've accommodated you.

15:43:15 13 **Q** Not every time. Not every time, Doctor.

15:43:19 14 And in this particular opinion -- in this
15:43:25 15 particular opinion, you have told us now a number of times
15:43:28 16 how you came to that opinion. May I -- may I presume that
15:43:34 17 your opinion about the curved fracture on the opposite
15:43:37 18 side towards the top is less certain, because the image in
15:43:43 19 that fracture is less clear than the one on the right
15:43:45 20 side?

15:43:45 21 **A** That it's -- that I am less certain it's a
15:43:48 22 patterned injury?

15:43:50 23 **Q** Well, let's start with that.

15:43:51 24 **A** Okay.

15:43:52 25 **Q** A patterned injury, you said you can't rule out a

15:43:54 1 golf club, correct?

15:43:55 2 **A** For that one on the left side, yes.

15:43:57 3 **Q** Are you more certain about your opinion on the --
15:44:00 4 with respect to the golf club, with respect to the
15:44:03 5 fracture on the right side of the head than you are with
15:44:05 6 the one on the left side at the top? Or are they the
15:44:10 7 same? Do you have the same feeling about those?

15:44:11 8 **A** Yeah. It's kind of a splitting of hairs if you
15:44:15 9 want to think of it that way. When you say you cannot
15:44:17 10 rule it in -- you can't rule it in or out, it's a broader
15:44:22 11 brush than how you are trying to paint it I think.

15:44:24 12 **Q** It would be a mistake, wouldn't it, for anyone
15:44:28 13 listening to your testimony to come away thinking that you
15:44:31 14 have said that a particular object caused any of the
15:44:35 15 fractures on this lady's skull?

15:44:37 16 **A** That's correct.

15:44:39 17 MR. SEARS: No further questions.

15:44:40 18 THE COURT: Thank you, Mr. Sears.

15:44:42 19 Mr. Butner, redirect.

15:44:44 20 REDIRECT EXAMINATION

15:44:45 21 MR. BUTNER: Thank you.

15:44:45 22 **Q** Dr. Fulginiti, you have been provided with some
15:45:03 23 information -- you were provided with some information
15:45:06 24 about what the police had found in connection with this
15:45:10 25 case at the time that you did your reconstruction; is that

15:45:15 1 right?

15:45:15 2 **A** Um, can you be more specific?

15:45:18 3 **Q** I really can't, because I really don't know what
15:45:21 4 you were provided with.

15:45:22 5 **A** I did not know that they were looking at a golf
15:45:24 6 club when I did my reconstruction.

15:45:26 7 **Q** You had no idea?

15:45:27 8 **A** No.

15:45:28 9 **Q** Do you recall what information you had been
15:45:33 10 provided by the police in terms of what they knew about
15:45:39 11 the murder of Carol Kennedy?

15:45:43 12 **A** Initially when Sergeant Huante called me, it was
15:45:49 13 we have a woman whose skull might need a reconstruction.
15:45:54 14 Quite honestly I don't recall if he told me they thought
15:45:57 15 it was blunt force or not. It was just that there was a
15:46:00 16 lot of trauma and I don't think that the head -- that the
15:46:03 17 autopsy had been conducted at that point when I talked to
15:46:07 18 him, and that was a like a courtesy call, heads-up type of
15:46:10 19 thing.

15:46:10 20 And then when I spoke to Lieutenant
15:46:15 21 Rhodes -- at the time Lieutenant Rhodes about the case, it
15:46:19 22 was the skull has been subjected to blunt force. There's
15:46:23 23 a lot of pieces. We need you to do a reconstruction.

15:46:28 24 **Q** Did either Sergeant Huante or Lieutenant Rhodes
15:46:31 25 suggest any kind of objects to you that would cause these

15:46:35 1 injuries?

15:46:35 2 **A** I think I might have known that she was found
15:46:39 3 next to the desk and that there was a bookcase or a
15:46:41 4 bookshelf or something to do with books around her. But
15:46:46 5 honestly I don't remember a specific object or objects
15:46:49 6 that they were talking about at that time.

15:46:52 7 **Q** At some point in time, in fact, did you take a
15:46:57 8 look at the desk?

15:46:58 9 **A** Yes, I did.

15:46:59 10 **Q** And when you looked at the desk, did you
15:47:03 11 scrutinize the area of the desk as Mr. Sears was talking
15:47:08 12 about the area along the edge and the corner and so forth?

15:47:11 13 **A** Yes, I did.

15:47:12 14 **Q** And did you have any -- what did you think about
15:47:20 15 that as compared with the injuries to Carol Kennedy?

15:47:24 16 **A** At one point during the discussion with someone
15:47:27 17 from law enforcement, it was probably Detective McDormett,
15:47:31 18 they told me that the edge of the desk had a curve to it
15:47:33 19 and I said, well, it would be very important for me to see
15:47:36 20 the curve, because that's the injury that I am looking at.

15:47:39 21 So on the day of the interview with
15:47:44 22 Mr. Sears, we looked at the desk and I looked at the
15:47:46 23 outline of the injury and I drew it on a piece of paper
15:47:50 24 and it is the mirror image of the injury on the right
15:47:55 25 sides of Carol's head.

15:47:56 1 So, in other words, the curve on her head
15:47:58 2 goes this way, and the curve on the desk goes this way.
15:48:00 3 So it's opposite of what it should be if that caused that
15:48:03 4 injury.

15:48:04 5 Q In other words, you concluded that the desk could
15:48:10 6 or could not cause the injury on the right side of Carol
15:48:13 7 Kennedy's head?

15:48:14 8 A That the part of the desk that had blood and the
15:48:17 9 hair was the wrong shape to create that injury on her
15:48:22 10 head, so that it could not have caused that injury.

15:48:27 11 Q What about -- what about the corner area of the
15:48:30 12 desk, could the corner area of the desk in combination
15:48:34 13 with the flat surface on top have caused any of these
15:48:37 14 injuries that were visible when you reconstructed Carol
15:48:41 15 Kennedy's skull?

15:48:43 16 A Yes.

15:48:44 17 Q Which ones?

15:48:45 18 A The one above her left eye. The one we have been
15:48:48 19 talking a lot about. And then there is one on the back of
15:48:51 20 her skull that we talked about early -- early this
15:48:54 21 morning, like five o'clock --

22 Q Okay.

15:48:57 23 A -- on the back of her head. She has that area
15:49:01 24 where the fractures look early in the event and there's a
15:49:04 25 chip. That fracture also could have been caused by the

15:49:07 1 edge of the desk.

15:49:08 2 Q And that's the fracture where the little piece of
15:49:13 3 skull was missing from the outer layer?

15:49:16 4 A Yes.

15:49:16 5 Q And have you been provided by law enforcement
15:49:31 6 with all of the information that they had that led them to
15:49:35 7 believe that the weapon in this case was a golf club?

15:49:39 8 A Yes.

15:49:40 9 Q You have been provided with everything that law
15:49:42 10 enforcement --

15:49:42 11 A Well, I don't know everything, but I know the
15:49:44 12 rough story.

15:49:45 13 Q Okay. Were you provided with information about
15:49:57 14 the missing golf club head cover?

15:49:59 15 A Yes.

15:50:00 16 Q And were you provided with information that there
15:50:10 17 was no golf club found at the crime scene?

15:50:13 18 A Yes.

15:50:13 19 Q And in reaching your conclusions in this
15:50:31 20 particular case, have you been provided with any
15:50:38 21 information by law enforcement that causes you to be able
15:50:44 22 to rule out usage of a golf club for the infliction of the
15:50:49 23 injuries to the skull of Carol Kennedy?

15:50:53 24 A Have I been provided with any information from
15:50:55 25 law enforcement that allows me to exclude the golf club?

15:50:58 1 Q That's correct.

15:50:59 2 A No.

15:51:01 3 Q Have you been provided with any information from
15:51:04 4 any source that allows you to exclude or rule out the golf
15:51:10 5 club as the source of the injuries that you have been
15:51:14 6 talking about to Carol Kennedy's skull?

15:51:16 7 A No.

15:51:18 8 Q When you say patterned injury, I am not sure I
15:51:22 9 got that absolutely clear. Would you explain what you
15:51:26 10 meant by that specific term a patterned injury?

15:51:29 11 A When you look at Carol Kennedy's skull, there's a
15:51:33 12 lot of fractures. Most of those fractures are comminuted.
15:51:38 13 Multiple. Nonspecific. They run across the skull.
15:51:45 14 They're in different path -- they're in different
15:51:50 15 vertices. That's a bad word. They run vertically. They
15:51:53 16 run horizontally. There are two that have a distinct
15:51:57 17 outline that resembles a pattern.

15:52:00 18 A pattern injury is the round head of a
15:52:03 19 hammer, the claw of a hammer, a crowbar, an axe handle.
15:52:14 20 Those are examples of a patterned injury.

15:52:16 21 And the injury on Carol's head that's on the
15:52:19 22 right, the curvilinear injury and that injury on her --
15:52:22 23 that drops down and curves to the front like this, those
15:52:25 24 are two injuries that I would consider to have a pattern
15:52:29 25 as opposed to just being comminuted fractures that don't

15:52:32 1 have any rhyme or reason to them.

15:52:34 2 Q And in the case of those two patterned injuries,
15:52:40 3 was there anything about those -- are those the
15:52:42 4 injuries -- let me just back up for a second.

15:52:45 5 In the case of those two injuries, the one
15:52:47 6 that's on the right with the curvilinear aspect and then
15:52:51 7 the one that is on the left that comes down from the top
15:52:53 8 with the curvilinear aspect to it, are those the injuries
15:52:59 9 that gave rise to your belief that a golf club could be
15:53:02 10 the instrument that caused those injuries?

15:53:04 11 A It's the one on the right that I saw before I did
15:53:07 12 any reconstructing and I just thought to myself, wow, that
15:53:10 13 looks like a wood.

15:53:12 14 Q And in regards to the studies that were done by
15:53:18 15 Ann Kromen, did you review the photographs of the type of
15:53:21 16 fractures that she studied when she used that curved
15:53:27 17 object that she dropped on skulls?

15:53:29 18 A Yes.

15:53:30 19 Q Did those injuries -- were those injuries
15:53:34 20 patterned type injuries?

15:53:36 21 A I would not describe them that way, no.

15:53:38 22 Q How were they different from the patterned
15:53:43 23 injuries that you observed on the skull of Carol Kennedy?

15:53:47 24 A In that -- in those cases, what I observed was
15:53:50 25 that they were the same type of plus shaped or star shaped

15:53:54 1 that we have been talking about where you see convergence
15:53:57 2 of fractures, and then they radiate out from a center
15:54:00 3 point. You don't -- I didn't observe any of these ones
15:54:03 4 that have a clear pattern to them. It's more -- I wish I
15:54:11 5 could describe it better. It's just un-patterned. There
15:54:13 6 is not a specific -- you don't look at it and say, oh,
15:54:17 7 that's a ball-peen hammer. Oh, that's the claw. You
15:54:21 8 know, oh, that could be X, Y, Z. There's nothing that
15:54:24 9 occurs to you when you look at it. You just say, oh, that
15:54:26 10 could be a two by four or that could be a ball bat or, you
15:54:29 11 know, something that doesn't have any kind of character to
15:54:32 12 it.

15:54:32 13 Q Your job isn't to determine the cause of death,
15:54:40 14 right?

15:54:40 15 A Correct.

15:54:40 16 Q That's the job that is left to the M.E.?

15:54:44 17 A That's correct.

15:54:45 18 Q Right?

15:54:46 19 In determining -- in looking at injuries and
15:54:53 20 determining the cause of death, or in determining whether
15:54:57 21 they're patterned injuries, would it be of assistance to
15:55:03 22 you in looking at what kind of -- and considering what
15:55:06 23 type of object caused the injuries, if you were able to
15:55:11 24 see what types of lacerations had occurred to the scalp
15:55:17 25 that overlaid those fractures and bony injuries?

15:55:22 1 **A** Sometimes it's useful, yes.

15:55:26 2 **Q** And how would it be useful to you in arriving at
15:55:31 3 what type of object caused those bony injuries if you were
15:55:35 4 able to see what types of lacerations overlies the
15:55:38 5 injuries?

15:55:39 6 **A** I will give you an example. I had a case with a
15:55:41 7 dry wall hammer, and for those of you that don't know, as
15:55:44 8 I didn't know before this case, a dry wall hammer has a
15:55:47 9 waffle pattern on it. You are all nodding, so obviously
15:55:49 10 you are smarter than me. It has a waffle pattern on it so
15:55:52 11 that you can pound the dry wall.

15:55:54 12 In this particular case, the soft tissue had
15:55:57 13 the same waffle pattern on it, and then when you took it
15:56:01 14 off the bone, the bone had little square edges that
15:56:05 15 matched the square edges on the waffle and on the outline
15:56:08 16 of the hammer. Now, obviously you are not going to see
15:56:11 17 the waffle pattern on the skull, but knowing that the
15:56:14 18 waffle existed on the soft tissue was helpful in
15:56:17 19 determining that weapon could not be ruled out.

15:56:21 20 So my findings supported that of the Medical
15:56:25 21 Examiner.

15:56:25 22 Does that make -- does that answer your
15:56:26 23 question?

15:56:27 24 **Q** I think that it does. That's an example?

15:56:28 25 **A** It's an example.

15:56:29 1 Q And so if you were to drop a heavy object
15:56:34 2 straight down on a skull that was laying on a concrete
15:56:39 3 slab, would the type of injury to the soft tissues on the
15:56:47 4 outside of the skull help you in determining what type of
15:56:51 5 object caused the injuries to the skull that was laying on
15:56:54 6 the slab?

15:56:55 7 A It could be, yes.

15:56:56 8 Q And how would that be of assistance?

15:56:59 9 A If the object that was dropped had a shape to it
15:57:04 10 and you could see the shape of the object in the soft
15:57:06 11 tissue, that would be helpful.

15:57:08 12 If it was a particular size, although the
15:57:11 13 skin is not great for that, but, yeah, the shape of it
15:57:15 14 might be the most important part.

15:57:17 15 Q So you could see the shape of the object that
15:57:21 16 struck the soft tissue by the lacerations in the soft
15:57:25 17 tissue?

15:57:25 18 A Sometimes you can, yes.

15:57:28 19 Q Okay. What type of -- are you aware of what type
15:57:33 20 of lacerations occur when you drop a -- a large round type
15:57:39 21 of object straight down on a skull that's covered with
15:57:44 22 skin?

15:57:44 23 MR. SEARS: Foundation. Form of the question.

15:57:46 24 THE COURT: First it was yes or no, so overruled.
15:57:49 25 That may be answered yes or no if you can answer.

15:57:51 1 THE WITNESS: If I can answer.

15:57:53 2 MR. BUTNER:

15:57:53 3 Q Are you aware of what types of injuries are
15:57:56 4 caused by that type of object to the soft tissue when it's
15:58:01 5 dropped straight down on a skull?

15:58:03 6 A Yes.

15:58:04 7 MR. SEARS: Vague, ambiguous, your Honor. How
15:58:06 8 big is the object? How far is it dropped from? What part
15:58:09 9 of the skull was impacted?

15:58:12 10 THE COURT: Overruled. I think you answered, but
15:58:16 11 you may answer the question.

15:58:17 12 THE WITNESS: Yes.

15:58:17 13 MR. BUTNER:

15:58:18 14 Q What types of lacerations or injuries to the soft
15:58:21 15 tissue can be caused by that type of an object dropping
15:58:24 16 down on a skull covered with skin?

15:58:27 17 A What you would likely see, if it's over a bony
15:58:30 18 prominence, you are going to see a split along the
15:58:32 19 prominence. If it's over the round part of the vault, you
15:58:35 20 are going to see a split where it's pushed the skin out of
15:58:38 21 the way as it was moving through the skin to the skull.

15:58:42 22 Q Is that type of a laceration to the skin caused
15:58:46 23 by such an object likely to be of a curved nature as it
15:58:53 24 overlaid the fractures?

15:58:54 25 A I think it depends on the shape of the object

15:59:00 1 doing the hitting and where it hits on the skull.

15:59:02 2 Q If it has the curved edge to it, it would cause
15:59:05 3 such lacerations?

15:59:06 4 A If it's a very prescribed curve. If it's more of
15:59:10 5 a generic curve, it may be not so much.

15:59:12 6 Q So it needs an edge to cause such lacerations?

15:59:14 7 A It needs to be narrower. I keep using the word
15:59:17 8 circumscribed, proscribed, narrower. It needs to be
15:59:20 9 smaller and more focused.

15:59:25 10 Q So what you consider yourself -- what you look at
15:59:30 11 when you are doing your job are the bones?

15:59:33 12 A Yes.

15:59:34 13 Q You don't look at the soft tissue?

15:59:37 14 A Sometimes I see it because I work in a Medical
15:59:39 15 Examiner's office, and I do find it's helpful to have more
15:59:42 16 information than less, but primarily my job is to look at
15:59:46 17 the bone, make an independent assessment of it, and then
15:59:50 18 tell the Medical Examiner what my findings are.

15:59:54 19 Q And the Medical Examiner is the person that
15:59:58 20 basically looks at the totality of the picture and makes a
16:00:01 21 decision in terms of the cause of death?

16:00:04 22 A Yes.

16:00:05 23 Q And also then the Medical Examiner based upon not
16:00:12 24 only the bony injuries, but also the soft tissue injuries,
16:00:17 25 they offer opinions concerning the type of murder weapon?

16:00:21 1 **A** Yes. They could. Yes.

16:00:28 2 MR. BUTNER: I don't have any further questions.

16:00:30 3 Thank you, Judge.

16:00:30 4 THE COURT: Thank you Mr. Butner.

16:00:31 5 Ladies and Gentlemen, do you have questions
16:00:34 6 for Dr. Fulginiti?

16:00:37 7 We have some questions. So, Dr. Fulginiti,
16:00:41 8 what I am going to do is take a recess here while we
16:00:45 9 quickly review the questions.

16:00:47 10 THE WITNESS: Okay.

16:00:47 11 THE COURT: On the record and I will ask you
16:00:49 12 to --

16:00:50 13 THE WITNESS: That I would go away.

16:00:51 14 THE COURT: Actually if you would excuse yourself
16:00:54 15 now, that would be fine. Please watch your step.

16:00:56 16 THE WITNESS: I will. Thank you.

16:00:57 17 THE COURT: You can wait until the jury exits.
16:01:01 18 Whatever you wish.

16:01:08 19 (Whereupon, the witness left the courtroom.)

16:01:09 20 THE COURT: Ladies and Gentlemen, take your time
16:01:10 21 and make sure you get the questions that you would like
16:01:13 22 posed. Get an idea of how many we have.

16:02:26 23 Okay. Thank you, Ladies and Gentlemen.

16:02:27 24 We will go ahead and take a recess. Please
16:02:30 25 be ready to come back in 20 minutes. Hope to get started

16:02:35 1 at 25 after. Thank you.

16:02:44 2 (Whereupon, the jury left the courtroom.)

16:06:34 3 THE COURT: Counsel, if we could start to review
16:06:36 4 the questions. Go on the record then with the jury not
16:06:40 5 present and the attorneys present. Mr. Democker present.

16:06:43 6 Number six and seven. Well, number six the
16:06:50 7 attorneys have seen, and number seven we had it in pencil.
16:06:56 8 Has to do with scheduling and I am going to adjust the
16:06:59 9 start time on Tuesday. There may be other legal matters
16:07:04 10 to address anyway, but I guess you might not have been
16:07:07 11 able to read, but it just had to do with a conflict one of
16:07:10 12 the jurors has temporarily in getting started right at
16:07:14 13 9:00.

16:07:16 14 MR. BUTNER: We're going to get a darker copy of
16:07:17 15 these?

16:07:17 16 THE COURT: Yes. You are going to get a better
16:07:19 17 copy of that. Phil is working on that.

16:07:21 18 MR. BUTNER: Okay.

16:07:21 19 THE COURT: Number six. What I thought I would
16:07:23 20 do is I don't want to address anymore today, just speaking
16:07:27 21 in a general discussion about lighting. I thought I would
16:07:30 22 address that and then just go over this preliminary
16:07:39 23 instruction that would apply to number six when we resume.
16:07:43 24 I want to have that in a setting that's a little bit
16:07:47 25 separated from the discussion of the questions here.

16:07:52 1 But if you look at number one, first
16:07:57 2 question, when received skull, did it still have scalp?
16:08:02 3 Any objection, Mr. Butner.
16:08:03 4 MR. BUTNER: No objection.
16:08:04 5 THE COURT: Mr. Sears?
16:08:04 6 MR. SEARS: No objection.
16:08:05 7 THE COURT: Okay. One will be asked.
16:08:08 8 Number two. Did you see the actual desk or
16:08:14 9 photos of the desk?
16:08:15 10 Objection?
16:08:15 11 MR. BUTNER: None.
16:08:16 12 MR. SEARS: No objection.
16:08:17 13 THE COURT: Two will be asked.
16:08:20 14 Three has several parts. Part one, and once
16:08:23 15 again referring to exhibits, so if the attorneys can be
16:08:28 16 familiar with those. Part one. Exhibit -- oh, it's 3027
16:08:37 17 and 3029. Inner or outer table view?
16:08:43 18 Any objection?
16:08:45 19 MR. BUTNER: No objection. I think we need to
16:08:48 20 hand those photos to her. Are those the actual exhibits
16:08:51 21 that you have?
16:08:53 22 MR. SEARS: Yes.
16:08:56 23 MR. BUTNER: And it may be necessary, and I am
16:08:58 24 thinking it might be necessary to show these to the jury.
16:09:01 25 THE COURT: I think it would be more clear.

16:09:05 1 MR. SEARS: Then we'll have to put the screen up.
16:09:07 2 THE COURT: I know.
16:09:11 3 MR. BUTNER: Either that or we --
16:09:12 4 MR. PAPORE: Just publish them by passing photos
16:09:15 5 around, Judge.
16:09:18 6 THE COURT: Whoever is asking the question has
16:09:20 7 specific exhibits in mind. Perhaps the witness can just
16:09:25 8 demonstrate. Stand and demonstrate.
16:09:29 9 MR. BUTNER: Stand in front of the jury. That
16:09:31 10 would be good.
16:09:32 11 THE COURT: I haven't heard from defense yet if
16:09:35 12 they are objecting to part one.
16:09:36 13 MR. SEARS: No. Tell me again, your Honor, what
16:09:39 14 you were thinking about doing? Displaying these photos?
16:09:42 15 THE COURT: Just having Dr. Fulginiti stand and
16:09:45 16 say 3029, that's an inner view or outer view and just
16:09:52 17 describe in that fashion rather than saying --
16:09:54 18 MR. SEARS: Sure. Maybe she can just be told the
16:09:56 19 reason for doing that, so she doesn't inadvertently turn
16:10:00 20 it towards the camera.
16:10:02 21 THE COURT: If she would stand over towards the
16:10:05 22 prosecution.
16:10:06 23 MR. BUTNER: Probably with her back to us and
16:10:08 24 face kind of at an angle so that everybody in the jury see
16:10:11 25 it.

16:10:12 1 MR. SEARS: We have got time to put the screen
16:10:13 2 up, your Honor.

16:10:14 3 THE COURT: We can put the screen up.

16:10:15 4 MR. SEARS: That's simpler.

16:10:16 5 THE COURT: Okay. We will do that, Mr. Butner.

16:10:19 6 No objection to part one from either side.

16:10:23 7 Exhibit 3025, what are the two dark spots on
16:10:28 8 the skull and temple area and lower left above where jaw
16:10:35 9 attaches? Any objection?

16:10:37 10 MR. BUTNER: No objection.

16:10:39 11 MR. SEARS: No objection.

16:10:41 12 THE COURT: We will need to put this on the
16:10:45 13 screen anyway.

16:10:45 14 MR. BUTNER: Right.

16:10:46 15 THE COURT: How many pieces was the skull in?
16:10:55 16 Any objection?

16:10:55 17 MR. BUTNER: No objection.

16:10:58 18 MR. SEARS: No objection.

16:10:59 19 THE COURT: Part four. Can you show us what you
16:11:04 20 mean by using the golf club as a club and how it turns or
16:11:08 21 rotates by swinging the club and showing us what you mean?

16:11:13 22 Any objection, Mr. Butner?

16:11:14 23 MR. BUTNER: No objection.

16:11:15 24 THE COURT: Mr. Sears?

16:11:16 25 MR. SEARS: No objection.

16:11:25 1 THE COURT: Okay. Part four will be asked.

16:11:27 2 Can we hold the golf club to feel its

16:11:31 3 weight?

16:11:32 4 Any objection?

16:11:32 5 MR. BUTNER: No objection.

16:11:33 6 MR. SEARS: No objection.

16:11:34 7 THE COURT: Five, it will be asked.

16:11:37 8 Six. The other two skulls that were worse
16:11:41 9 than this one, what kind of cases were those? Were they
16:11:46 10 crimes of passion or something else?

16:11:50 11 MR. BUTNER: No objection.

16:11:51 12 THE COURT: Mr. Sears?

16:11:52 13 MR. SEARS: No foundation. Relevance. 702. A
16:11:56 14 lot of problems with that.

16:12:00 15 THE COURT: I think she provided a pretty good
16:12:05 16 description of what she meant that made them worse. I am
16:12:09 17 not going to ask six.

16:12:12 18 Page four. Do you know if the brain was
16:12:24 19 damaged much? Would it show a pattern also?

16:12:27 20 Mr. Butner, any objection?

16:12:29 21 MR. BUTNER: No objection.

16:12:30 22 THE COURT: Mr. Sears?

16:12:34 23 MR. SEARS: She didn't receive a brain, nor did
16:12:37 24 she ever examine it. There is no foundation. No possible
16:12:40 25 foundation for that.

16:12:41 1 THE COURT: Mr. Butner, do you know?

16:12:45 2 MR. BUTNER: She did not receive the brain. It
16:12:47 3 had been removed and that was the testimony from Dr. Keen.

16:12:51 4 THE COURT: Then I am not going to ask that part.

16:12:53 5 Is it possible for the skull to bruise? Is
16:13:02 6 it possible for the skull to bruise?

16:13:04 7 Any objection?

16:13:04 8 MR. BUTNER: No objection.

16:13:05 9 THE COURT: Mr. Sears?

16:13:30 10 MR. SEARS: That is a yes or no question.

16:13:31 11 THE COURT: That is a yes or no. That part.

16:13:33 12 MR. SEARS: No objection on that basis.

16:13:34 13 THE COURT: Okay. I will put yes or no.

16:13:39 14 Then there is a second part. Exhibit Number
16:13:46 15 3029, what is the darker shade in the curved pattern?

16:13:49 16 Any objection to that part?

16:13:49 17 MR. BUTNER: No objection.

16:13:50 18 THE COURT: Mr. Sears?

16:13:51 19 MR. SEARS: No objection.

16:13:52 20 THE COURT: That will be asked.

16:13:54 21 Page five, part one. In your opinion, could
16:14:01 22 a wooden dowel one inch to two inch in diameter cause
16:14:04 23 fractures which could penetrate the table of the skull?

16:14:09 24 Any objection?

16:14:10 25 MR. BUTNER: No objection.

16:14:12 1 MR. SEARS: No objection.

16:14:13 2 THE COURT: Part one will be asked.

16:14:15 3 Number two: Did you see the lacerations on

16:14:22 4 Ms. Kennedy's scalp?

16:14:24 5 Any objection?

16:14:24 6 MR. BUTNER: No objection.

16:14:26 7 MR. SEARS: I think she answered that a number of
16:14:28 8 times that she didn't.

16:14:30 9 THE COURT: I will go ahead and answer -- ask her
16:14:34 10 just for clarification.

16:14:35 11 Number six, as I have indicated, I think
16:14:38 12 that's something I take up more in isolation from just
16:14:42 13 this witness, but I am thinking Tuesday morning when I
16:14:49 14 address the lighting situation, just to also maybe read
16:14:53 15 this. Just have it somewhat separated from a particular
16:14:58 16 witness.

16:14:58 17 Mr. Butner?

16:14:59 18 MR. BUTNER: No objection.

16:14:59 19 THE COURT: Mr. Sears?

16:15:00 20 MR. SEARS: When you say this, you mean
16:15:01 21 preliminary jury instructions on --

16:15:03 22 THE COURT: Yeah. Ms. Chapman did provide me a
16:15:08 23 copy of what was read by Judge Lindberg. I also have just
16:15:12 24 the one out of the bench book.

16:15:14 25 MR. SEARS: I think it ought to be read now. I

16:15:15 1 think there is no reason not to read it now. This is a
16:15:17 2 matter that's fresher in the beginning of the juror's mind
16:15:20 3 about this witness. I think it's responsive to this
16:15:25 4 question. I think it is the proper way to answer this
16:15:27 5 question.

16:15:29 6 THE COURT: Mr. Butner?

16:15:30 7 MR. BUTNER: I think it is an unfair comment upon
16:15:31 8 the evidence by the Court at this point in time. It draws
16:15:36 9 specifically towards this witness and I don't think that's
16:15:40 10 appropriate, Judge.

16:15:41 11 I do believe it would be appropriate to
16:15:44 12 refresh the jury's recollection at a later point in time
16:15:46 13 so they could consider it and the witness' testimony in
16:15:50 14 the totality of all of the evidence and this is basically
16:15:54 15 a reminder in response to this juror's question. That
16:15:58 16 instruction I mean is a reminder of what the Court's
16:16:01 17 instructions were in regards to the juror's question.

16:16:04 18 But to read it at this point in time would
16:16:06 19 be, in essence, a comment upon the evidence by the Court
16:16:10 20 and how you should view this particular witness' testimony
16:16:14 21 much more carefully than possibly any other witness.

16:16:17 22 THE COURT: Mr. Sears, anything else on this?

16:16:19 23 MR. SEARS: Your Honor, I think you said that it
16:16:21 24 was often your practice to give the preliminary jury
16:16:25 25 instructions -- copies of them to the jurors.

16:16:27 1 I think we can treat this question as a
16:16:29 2 request for a further instruction or some additional
16:16:34 3 information about instruction already given. I can't see
16:16:37 4 how that could ever be a comment or inappropriate comment
16:16:39 5 on the evidence to instruct the jury on the law when a
16:16:42 6 juror has asked for an instruction.

16:16:47 7 MR. BUTNER: This relates just to one juror,
16:16:48 8 Judge, and --

16:16:50 9 THE COURT: I know. And that's -- Mr. Sears, my
16:16:54 10 thoughts were along the line of Mr. Butner's. To flag
16:16:58 11 this with this witness present and say this would -- could
16:17:02 12 be construed as having one juror's perception implanted
16:17:08 13 with the others, if you will, and that's why I think there
16:17:11 14 should be some time, but not too much. I mean, so next
16:17:15 15 week it can be addressed, but not in the immediate
16:17:19 16 setting.

16:17:20 17 MR. BUTNER: And I don't have any objection that
16:17:22 18 the jury be provided with copies of preliminary
16:17:24 19 instructions at this point in time either.

16:17:26 20 THE COURT: That's another thing to do because
16:17:29 21 that way I can just make a reference to preliminary
16:17:32 22 instructions and that would have simplified this
16:17:35 23 particular issue, if anybody has any -- wants any general
16:17:42 24 information on considering witness testimony, there's a
16:17:46 25 reference to that in your preliminary instructions and

16:17:50 1 then they could look.

16:17:51 2 At this time I am going to follow through
16:17:55 3 with what I indicated initially. I am going to cover this
16:17:58 4 one next Tuesday with other general matters.

16:18:02 5 Okay. And then did you get a legible copy
16:18:08 6 of the concern from the one juror with the time about
16:18:13 7 starting?

16:18:15 8 MR. BUTNER: I don't have any objection to that,
16:18:17 9 Judge.

16:18:18 10 THE COURT: So there may be some other legal
16:18:22 11 matters on Tuesday as well. I have some rulings. I have
16:18:26 12 been working on some additional rulings.

16:18:29 13 Probably aren't going to be available until
16:18:39 14 fairly early Monday. Shortly after eight.

16:18:41 15 In any event I am going to announce a start
16:18:45 16 time at 9:30 for Tuesday.

16:18:50 17 Any problem with that?

16:18:52 18 MR. BUTNER: No.

16:18:53 19 MR. SEARS: Indefinitely?

16:18:54 20 THE COURT: Just for this next Tuesday.

16:18:56 21 MR. HAMMOND: The way this thing is written, do
16:18:58 22 we know how the bridge will be after Tuesday?

16:19:02 23 THE COURT: No, we don't. We don't and I thought
16:19:05 24 we could just go along for now and see.

16:19:08 25 MR. BUTNER: Cross that bridge when we get to it.

16:19:11 1 THE COURT: Okay.

16:19:16 2 MR. SEARS: Do you want us here earlier than 9:30
16:19:18 3 on Tuesday?

16:19:19 4 THE COURT: The usual 8:30 rule that I would like
16:19:22 5 to follow and that is if there are legal matters to take
16:19:24 6 care of, be here by 8:30. I am going to be covering
16:19:29 7 the -- well, that's Tuesday. So you should have the
16:19:32 8 rulings Monday morning actually, if that prompts anything.
16:19:36 9 So, yes, by 8:30.

16:19:38 10 MR. SEARS: Thank you.

16:19:40 11 THE COURT: Okay. Why don't I just remain here
16:19:42 12 and bring the jury back in.

16:19:46 13 Phil just informed me of this, and that is
16:20:32 14 that the witness is conversing with Mrs. Democker, I
16:20:35 15 guess, is that gist of it.

16:20:37 16 THE BAILIFF: Yes, sir.

16:20:38 17 THE COURT: At least was something that they --
16:20:40 18 the juror noticed. A juror felt it was enough to tell the
16:20:47 19 bailiff, so I am going to tell you.

16:20:49 20 MR. SEARS: We will advise Ms. Democker
16:20:53 21 appropriately.

16:20:54 22 THE COURT: We can bring in --

16:20:59 23 THE BAILIFF: Let's put the screen up.

16:21:01 24 THE COURT: Let's get the screen up first.

16:21:03 25 (Whereupon, witness entered courtroom.)

16:21:03 1

LAURA FULGINITI

16:23:19 2

previously sworn in, resumed the stand:

16:23:19 3

THE COURT: I ask that people stand while the

16:23:21 4

jury enters, please.

16:23:28 5

(Whereupon, the jury entered the courtroom.)

16:24:13 6

THE COURT: Please be seated.

16:24:16 7

The record will show the presence of

16:24:18 8

defendant, all of the attorneys, the jury has now joined

16:24:22 9

us, and Dr. Fulginiti is back on the witness stand.

16:24:25 10

JURY QUESTIONS

16:24:25 11

Dr. Fulginiti, I have jury questions and I

16:24:29 12

will ask them, and after I finish all the questions, the

16:24:32 13

lawyers may choose to follow up.

16:24:33 14

THE WITNESS: Okay.

16:24:34 15

THE COURT: The first question is: When you

16:24:36 16

received the skull, did it still have scalp?

16:24:40 17

THE WITNESS: Yes.

16:24:41 18

THE COURT: Did you see the actual desk or photos

16:24:47 19

of the desk?

16:24:48 20

THE WITNESS: I saw the actual desk.

16:24:50 21

THE COURT: This next question is going to

16:24:56 22

involve looking at some exhibits.

16:24:59 23

Is Exhibits 3027 and 3029 inner or outer

16:25:10 24

table view?

16:25:12 25

So if Mr. Butner will tell me which exhibits

16:25:15 1 you are putting up.

16:25:16 2 MR. BUTNER: I have placed Exhibit 3027 on the
16:25:19 3 overhead at this time, Judge.

16:25:21 4 THE WITNESS: Exhibit 3027 is a view of the outer
16:25:25 5 table of the right side of Carol's head.

16:25:29 6 THE COURT: Then is Exhibit 3029 inner or outer
16:25:33 7 table view?

16:25:35 8 MR. BUTNER: And this is Exhibit 3029 that I have
16:25:38 9 just placed on the overhead.

16:25:40 10 THE WITNESS: Exhibit 3029 is the outer table of
16:25:44 11 the left side of Carol's head.

16:25:49 12 THE COURT: In Exhibit 3025, what are the two
16:25:52 13 dark spots on the skull and temple area and lower left
16:25:56 14 above where jaw attaches?

16:26:00 15 THE WITNESS: Okay. Can I clarify what we mean?

16:26:04 16 MR. BUTNER: Exhibit 3025 is on the overhead.

16:26:06 17 THE COURT: Okay. I will read the question
16:26:08 18 again, Dr. Fulginiti. In Exhibit 3025, what are the two
16:26:13 19 dark spots on the skull and temple area and lower left
16:26:18 20 above where jaw attaches?

16:26:21 21 THE WITNESS: Okay. On the two spots above here,
16:26:25 22 these dark spots are staining from the scalp and soft
16:26:30 23 tissue and the same for this sort of line of darkness.
16:26:35 24 That's just staining from the soft tissue.

16:26:39 25 THE COURT: How many pieces was the skull in?

16:26:48 1 THE WITNESS: I think in my report I said more
16:26:51 2 than 50, but in actuality if you count all the little
16:26:55 3 pieces of the sinuses, etcetera, it's well over 200.

16:27:01 4 THE COURT: And the next question will require
16:27:04 5 having the demonstrative exhibit, the club, the golf club.
16:27:10 6 And it is this: Can you show us what you mean by using
16:27:13 7 the golf club as a club and how it, quote, turns, unquote
16:27:18 8 or rotates, quote, unquote by swinging the club and
16:27:22 9 showing us what you mean?

16:27:29 10 THE WITNESS: May I stand down?

16:27:30 11 THE COURT: Yes, please. Wherever it's
16:27:32 12 convenient for you, and that's 2977 for demonstrative
16:27:43 13 purposes. That number.

16:28:20 14 It is 2977 the clerk is telling me.

16:28:23 15 So Dr. Fulginiti, did you hear the question?

16:28:27 16 THE WITNESS: They want to know how it turns in
16:28:29 17 your hands?

16:28:30 18 THE COURT: Can you show us what you mean by
16:28:31 19 using a golf club as a club and how it turns, rotates by
16:28:35 20 swinging the club and showing us what you mean.

16:28:49 21 THE WITNESS: When I was using the club, I was
16:29:08 22 trying to figure out how or what would happen I guess, and
16:29:14 23 it was an accidental finding. It wasn't something that I
16:29:17 24 expected to have happen, but when you hold the club
16:29:20 25 loosely and I kind of choked up on it a little bit, it

16:29:23 1 turns so that the back end of it, the weighted side of it
16:29:27 2 turns. Instead of hitting it as like you would a golf
16:29:31 3 club, it turns in your hand, if you can see what I mean by
16:29:34 4 that. It turns to the way it's weighted. And so if
16:29:38 5 you're just holding it loosely or if you are choking up on
16:29:40 6 it, not using it as a club, it changes the face of what is
16:29:44 7 actually impacting the structure. Does that make sense?

16:29:50 8 THE COURT: Phil, just hang on to the exhibit
16:29:52 9 there for a moment.

16:29:53 10 Dr. Fulginiti, you can have a seat there,
16:29:57 11 but the next question was can: We hold the golf club to
16:30:00 12 feel its weight.

16:30:02 13 So if you would go ahead and pass the club
16:30:05 14 through the jury. Anybody who wishes to handle the club
16:30:08 15 may.

16:30:09 16 Counsel, while the jury is looking at the
16:31:19 17 exhibit there, the golf club -- really one of the jurors
16:31:21 18 had some concern about having gloves on when handling the
16:31:26 19 exhibit. I phrased the question anybody who wanted to
16:31:32 20 handle the golf club and this is always what I tell people
16:31:35 21 who are on juries in cases -- and I think I might have
16:31:38 22 mentioned it earlier, Ladies and Gentlemen -- anybody who
16:31:41 23 wants to wear gloves while handling any exhibit, you can
16:31:45 24 do that. We have those. You don't have to handle the
16:31:48 25 exhibit if you don't want to, but the question may

16:31:51 1 actually relate to putting fingerprints on this particular
16:31:55 2 club.

16:31:57 3 Either side have any concern about that?

16:31:59 4 Mr. Butner?

16:32:00 5 MR. BUTNER: No, Judge. Not from the State's
16:32:02 6 point of view. We have already heard about that
16:32:05 7 particular golf club and where it came from.

16:32:07 8 THE COURT: Mr. Sears?

16:32:08 9 MR. SEARS: I agree.

16:32:09 10 THE COURT: Okay. Doctor, this a yes or no
16:32:26 11 question. Is it possible for the skull to bruise, if you
16:32:34 12 can answer that.

16:32:35 13 THE WITNESS: I have to say yes or no?

16:32:40 14 THE COURT: It's phrased in that way. Is it
16:32:41 15 possible? The lawyers may wish to follow up, but if you
16:32:44 16 can't answer it yes or no, I guess that is what you have
16:32:46 17 to say.

16:32:47 18 THE WITNESS: The answer is yes.

16:32:48 19 THE COURT: Pardon?

16:32:49 20 THE WITNESS: Yes.

16:32:50 21 THE COURT: All right. Then looking at Exhibit
16:32:55 22 3029, so I guess we need to have the screen once again.
16:33:00 23 Do we have 3029 handy?

16:33:02 24 MR. BUTNER: I will get 3029. No fair laughing.

16:33:29 25 I did this. Of course.

16:33:43 1 THE COURT: The question --

16:33:44 2 MR. BUTNER: I am putting 3029 on the overhead
16:33:49 3 projector at this time, Judge.

16:33:51 4 THE COURT: Thank you. Number 30 --

16:33:53 5 MR. BUTNER: I'm trying to get it focused. Just
16:33:55 6 a second. Okay.

16:33:59 7 THE COURT: The question is Number 3029, what is
16:34:02 8 the darker shade in the curved pattern?

16:34:06 9 THE WITNESS: Can I just first say I really
16:34:10 10 appreciate jury questions because they force you to look
16:34:12 11 at things that you never thought about before.

16:34:14 12 That sharper -- that, begin again -- the
16:34:20 13 darker shade in the middle of that area is an area of soft
16:34:25 14 tissue, ah, leaching through the bone. So, in other
16:34:34 15 words, the head may have been dependent on that particular
16:34:39 16 spot and so the blood flows into it. I believe this is
16:34:43 17 the left side, so, Mr. Sears, you told me she was on her
16:34:45 18 right side.

16:34:46 19 So there may have been a point during the
16:34:49 20 event when she was on her left side and you see this. I
16:34:53 21 think maybe what might be going on here, just based on the
16:34:56 22 shape, is that you're wondering if it could be an imprint.
16:35:01 23 I never really thought about it that way, but I don't -- I
16:35:05 24 am not sure.

16:35:12 25 THE COURT: In your opinion, could a wooden dowel

16:35:16 1 one inch -- start again -- in your opinion, could a wooden
16:35:20 2 dowel one inch to two inch in diameter cause fractures
16:35:25 3 which could penetrate the table of the skull?

16:35:35 4 THE WITNESS: I think that it is dependent on the
16:35:45 5 weight rather than the size, so if you had a wood that was
16:35:49 6 particularly heavy or if it was weighted in someway, then
16:35:53 7 yes, that is a possibility.

16:35:54 8 The size is less important than the heft or
16:35:58 9 the weight of the object that we are talking about.

16:36:03 10 THE COURT: Did you see the lacerations on
16:36:05 11 Ms. Kennedy's scalp?

16:36:07 12 THE WITNESS: I have seen photographs of the
16:36:09 13 lacerations. I saw the lacerations on her scalp when I
16:36:13 14 did my examination.

16:36:15 15 I would just like to clarify by saying that
16:36:18 16 it was a period of time after the death that I saw those
16:36:23 17 lacerations.

16:36:25 18 THE COURT: Counsel, I did get one last jury
16:36:27 19 question that was handed to me, and I'd like to go over
16:36:30 20 that before I ask you for follow-up questions. And then
16:36:32 21 we will have all the questions in for the follow-up. I am
16:36:36 22 going to ask this one, so again, Ladies and Gentlemen,
16:36:38 23 please feel to stand and stretch while I talk to the
16:36:41 24 lawyers side bar.

16:37:16 25 (Discussion held off the record.)

16:37:37 1 MR. BUTNER: We need 3025, right?

16:37:40 2 THE COURT: Yes. 3025.

16:37:43 3 MR. BUTNER: Thank you.

16:38:01 4 THE COURT: The last question is: Is tissue
16:38:07 5 staining caused by damage to tissue? And this is re:
16:38:12 6 Exhibit 3025.

16:38:13 7 THE WITNESS: Again, I think we are talking about
16:38:15 8 these dark colored stains on the skull here and here.
16:38:24 9 Tissue staining typically occurs during the decomposition
16:38:27 10 process, so as the body's decomposing, the bone is in
16:38:32 11 contact with the tissue. There's some seepage both from
16:38:35 12 the outside in, and also the diploe inside the skull.
16:38:39 13 Remember, we talked about the inside and the outside.
16:38:41 14 There's that spongy bone in the middle. It has its own
16:38:45 15 blood supply, so sometimes that can also leach through.

16:38:48 16 I think conservatively you say tissue
16:38:53 17 staining is not necessarily where an injury can occur;
16:38:56 18 however, I have seen it in, especially in fresher cases
16:39:01 19 where the injury is more recent, where there is a bruise
16:39:06 20 underneath where an impact may have occurred.

16:39:10 21 THE COURT: Thank you. Follow-up questions?
16:39:11 22 Mr. Butner?

16:39:12 23 REDIRECT EXAMINATION

16:39:12 24 MR. BUTNER: Thanks, Judge.

16:39:14 25 Q Just to clarify that your last series of answers,

16:39:18 1 when you say fresher cases, you're talking about the fact
16:39:22 2 that you work on cases where bodies are retrieved from the
16:39:25 3 desert that died years earlier, right?

16:39:29 4 **A** Or months.

16:39:30 5 **Q** As compared with much more recent types of
16:39:33 6 injuries?

16:39:33 7 **A** That's correct. You know, where the tissue is
16:39:37 8 very decomposed, so you see a lot more staining like what
16:39:40 9 we're seeing here.

16:39:42 10 **Q** So in this particular case, is this a, what you
16:39:46 11 would consider, a very fresh type of case?

16:39:49 12 **A** Yes. It would have been, but we have to take
16:39:54 13 into account the fact that I didn't see it right away. So
16:39:58 14 there was a little bit of time for some decomposition to
16:40:01 15 occur. Maybe not a lot, but yes.

16:40:03 16 **Q** Do you have an opinion about these stains as to
16:40:06 17 what the causation was for them?

16:40:08 18 **A** I think very interesting observation and in some
16:40:13 19 ways I wish I had seen it sooner because I might have more
16:40:17 20 opinion about it. Again the conservative view would be
16:40:20 21 this is tissue staining as opposed to an impact or a
16:40:23 22 bruise to the bone.

16:40:26 23 **Q** And that is your opinion basically in this
16:40:28 24 regard?

16:40:29 25 **A** Yes. Yes.

16:40:30 1 Q Judge I want to show -- there was a question
16:40:33 2 about -- do you recall the question about the outer table
16:40:38 3 of two exhibits and I believe those were Exhibits Number
16:40:41 4 3027 and 3029?

16:40:44 5 A Yes.

16:40:44 6 Q And you indicated that was the outer table on
16:40:51 7 each of those two exhibits; is that correct?

16:40:53 8 A Yes.

16:40:54 9 Q And then showing you Exhibit Number 3030, is this
16:41:11 10 the inner or outer table depicted in this particular
16:41:17 11 exhibit?

16:41:17 12 A This is the inner table and maybe for the
16:41:20 13 purposes of the jury, do you see the little grooves in the
16:41:24 14 bone? These little rivulets? Those are venous tracks,
16:41:29 15 arterial tracks where the vessels lay against the bone and
16:41:32 16 actually carve out like a river would. When you see
16:41:35 17 those, you're typically looking at the inside of the
16:41:37 18 skull. Now, it does occur on the outside, but in general
16:41:39 19 that is a good rule of thumb that you can use.

16:41:42 20 Q So Exhibit 3029 and 3027 are outer table views
16:41:48 21 and then 3030 is an inner table view, correct?

16:41:52 22 A That is correct.

16:42:11 23 MR. BUTNER: No further questions. Thank you.

16:42:13 24 THE COURT: Thank you, Counsel.

16:42:13 25 Mr. Sears.

RECROSS-EXAMINATION

MR. SEARS:

Q Doctor, you were asked a few questions here by our jury about the scalp and the lacerations. When the head came to you in a box, it still had flesh and some tufts of hair on it, correct?

A Yes.

Q That was surprising to you, right?

A Yes.

Q Why?

A I can think of only two other times when I received an entire head and they were both from out of county jurisdictions where they didn't have the facility to do the maceration, so they sent me the entire head. Typically in a case like this, the soft tissue is removed down to the bone and then I get it at that point.

Q In this case because it hadn't been, that's the first thing that you did, correct?

A Yes.

Q So you used a scalpel and then the rest of the process.

So you didn't examine the lacerations such as they were on the scalp when you saw it, right?

A I looked at them, but I didn't measure them or photograph them.

16:43:23 1 Q The face and scalp were terribly deformed,
16:43:26 2 weren't they?

16:43:27 3 A Yes.

16:43:28 4 Q In fact, the scalp had been reflected twice, once
16:43:32 5 at autopsy and then again when Dr. Keen let the police
16:43:38 6 come in with the golf club and stage those photographs
16:43:41 7 with the golf club? That would be two times that the
16:43:44 8 scalp had been reflected?

16:43:45 9 A I know it occurs during autopsy and if you say it
16:43:49 10 occurred again, then that is true.

16:43:50 11 Q When this happens, that changes dramatically the
16:43:52 12 relationship of the lacerations on the scalp to the
16:43:55 13 underlying fractures, right?

16:43:56 14 A Yes.

16:43:57 15 Q To the point where you really can't make an
16:43:59 16 examination of the scalp because you have lost all of the
16:44:03 17 tension --

16:44:03 18 A You have lost --

16:44:03 19 Q -- and integrity of the face, correct?

16:44:04 20 A You have lost the tension and integrity, but you
16:44:08 21 can reapproximate just the same way you do with a skull.
16:44:11 22 You have to just make the caveat or the warning that if
16:44:16 23 there has been some distortion of the injuries with that
16:44:18 24 process, the more you manipulate the scene, the looser it
16:44:22 25 gets.

16:44:22 1 Q But that doesn't matter because in any event you
16:44:24 2 didn't do any of that in this case, correct?

16:44:26 3 A That's correct.

16:44:26 4 Q And when you were handling the golf club and
16:44:31 5 talking about choking up, you actually have no idea if --
16:44:35 6 assuming a golf club was used in this case, how it was
16:44:37 7 actually wielded by the attacker, do you?

16:44:39 8 A No.

16:44:40 9 Q Whether it was held close to the head or two
16:44:42 10 hands or anything about that?

16:44:44 11 A No.

16:44:44 12 Q Whether it was swung wildly over the head? I
16:44:47 13 mean that is all beyond the scope of your work in this
16:44:49 14 case, correct?

16:44:50 15 A Yes.

16:44:53 16 Q The desk -- I am a little interested in you
16:44:55 17 getting to see the desk. That was on March 5th of this
16:44:59 18 year, when we had our interview, you were shown the desk;
16:45:02 19 is that right?

16:45:02 20 A Yes.

16:45:03 21 Q Was it your understanding that the police had
16:45:05 22 just come into possession of the desk shortly before that?

16:45:08 23 A I think so. I thought that is what they said the
16:45:10 24 day that I was here.

16:45:12 25 Q Do you remember what they said?

16:45:13 1 **A** That they had just taken it into custody or --
16:45:17 2 within a few days or weeks, something like.

16:45:19 3 **Q** March of 2010?

16:45:20 4 **A** Was that this year? Yes.

16:45:24 5 **Q** As opposed to July of 2008 when this event
16:45:27 6 occurred?

16:45:27 7 **A** Yes.

16:45:28 8 **Q** That was your understanding from your
16:45:30 9 conversations with the police; is that right?

16:45:31 10 **A** Yes.

16:45:31 11 **Q** Now, you said that you looked at the curve of the
16:45:35 12 desk and the desk curved the wrong way for the injury; is
16:45:39 13 that right?

16:45:39 14 **A** Yes.

16:45:39 15 **Q** Okay. So if you are looking at the front of the
16:45:41 16 desk, it bowed in which direction? Did it bow out into
16:45:46 17 the room or back towards the back wall?

16:45:49 18 **A** I don't remember.

16:45:50 19 **Q** Well, it would have been one or the other, right?

16:45:52 20 **A** It had sort of an "S" shape to it.

16:45:55 21 **Q** So it had sort of an "S" shape.

16:45:57 22 And you said because of the fact that the
16:46:01 23 curved aspect of this fracture on the right side was in a
16:46:04 24 particular position, you thought that the curve in the
16:46:06 25 desk was just backwards, right?

16:46:08 1 A Yes.

16:46:08 2 Q That's assuming that Carol struck the desk face
16:46:11 3 on, correct? That she was standing out here and she
16:46:14 4 struck the desk in one particular direction, right?

16:46:18 5 A Okay. Just a second. I have to think three
16:46:26 6 dimensionally. If I understand your question correctly,
16:46:29 7 I'm putting her in a particular position relative to the
16:46:32 8 desk. Could I turn her in any way to make her -- make
16:46:35 9 that injury fit? I think the answer is no. It didn't
16:46:39 10 match. It was a non-match.

16:46:41 11 Q They're was no possible way her body could be
16:46:44 12 turned or her head be turned to get the angle, the curve
16:46:48 13 of the desk to line up with the curve on her skull?

16:46:50 14 A My memory is I could not make it work.

16:46:53 15 Q You thought that through?

16:46:54 16 A Yes.

16:46:55 17 Q Could you be wrong?

16:46:56 18 A Yes.

16:46:58 19 Q Let me show you this photograph. This is 3029,
16:47:05 20 and you talked -- if I understood what you were saying was
16:47:07 21 that, for example, on 3025, did I hear you say that the
16:47:18 22 dark spots that you see there, you think are tissue
16:47:22 23 staining?

16:47:23 24 A That's what I think.

16:47:24 25 Q Not an impact. Okay. And it looks to me like

16:47:27 1 3029 is a close-up, and I will show you 3025 here and you
16:47:40 2 tell me if I am right. Is 3029 on the screen an
16:47:43 3 enlargement of this portion of 3025?

16:47:45 4 **A** Yes, it is.

16:47:46 5 **Q** So that's another mark on the skull that you
16:47:48 6 attribute to tissue staining, right?

16:47:51 7 **A** It is interesting. I think the conservative
16:47:59 8 point of view would be that it is tissue staining.

16:48:01 9 **Q** Okay. You think maybe somebody wants to see a
16:48:05 10 golf club head there?

16:48:06 11 **A** Yes, I do.

16:48:06 12 **Q** Okay. Now, let's talk about why that, apart from
16:48:09 13 the fact that it's -- that it could be tissue staining,
16:48:12 14 there are, as you describe it -- and let me have your --
16:48:16 15 deal here. You talked about points of impact. Here's the
16:48:18 16 cross at that point of impact, correct?

16:48:22 17 **A** Yes.

16:48:22 18 **Q** Here is the point of impact up here, correct?

16:48:24 19 **A** Um, maybe. I don't like that so much.

16:48:26 20 **Q** Okay. Over in this scalloped fracture, points of
16:48:29 21 impact?

16:48:30 22 **A** Yes.

16:48:30 23 **Q** Okay. There is no readily apparent
16:48:34 24 through-and-through, through the outer table impact in the
16:48:36 25 area of this stain, correct?

16:48:38 1 A Yes.

16:48:40 2 Q Is that right?

16:48:40 3 A Yes.

16:48:41 4 Q Okay. And so this is a large fracture. If this
16:48:45 5 is all one event here, you said it may have been bisected
16:48:49 6 by this into a smaller fracture, but this is one pretty
16:48:52 7 significant fracture of the skull, correct?

16:48:54 8 A Yes.

16:48:54 9 Q Okay. And you would expect that if there was an
16:48:58 10 impact image, if somehow mysteriously a golf club could
16:49:04 11 penetrate all the soft tissue and leave some mark on the
16:49:07 12 skull of Carol Kennedy, it would be at or near one of
16:49:10 13 these recognized points of impact and not in the middle of
16:49:13 14 the fracture, correct?

16:49:14 15 A I am going to bring up your cup. Can I do that?

16:49:17 16 Q Sure.

16:49:17 17 A This cup.

16:49:18 18 Q Sure.

16:49:18 19 A Not your other cup.

16:49:20 20 Remember you were asking me about if the
16:49:22 21 river rock had an extension on it?

16:49:24 22 Q Uh-huh.

16:49:24 23 A What if we're looking at a similar type of thing
16:49:27 24 here where there is a leading edge that is that shape and
16:49:29 25 then a bigger part of it is actually what caused the

16:49:32 1 fracture.

16:49:33 2 Q A lot of what ifs in that answer, right?

16:49:35 3 A Yes. But I am just saying you can't rule that
16:49:37 4 out.

16:49:38 5 Q No. And that's one of the things about the work
16:49:40 6 that you do is that every time you see something, there
16:49:43 7 are a number of possible plausible explanations, right?

16:49:46 8 A Yes. Absolutely.

16:49:47 9 Q But your first impression, if I understand it,
16:49:49 10 was that's tissue stain?

16:49:50 11 A Yes.

16:49:51 12 Q Okay. And that's not the golf club because it's
16:49:54 13 not big enough, is it?

16:49:56 14 A I'm sorry. What's not big enough?

16:49:59 15 Q This impression here is perhaps three
16:50:05 16 centimeters?

16:50:06 17 A I think if you look at the metal plate on the
16:50:09 18 golf club, it might -- I mean that is what I thought of
16:50:11 19 when the jury brought that forward, was the metal plating
16:50:17 20 maybe.

16:50:17 21 Q But there is no fracture?

16:50:18 22 A It never occurred to me before a fresh pair of
16:50:20 23 eyes looked at it.

16:50:21 24 Q Okay, but there is no fracture.

16:50:22 25 A There is no fracture.

16:50:23 1 Q Anywhere within the boundaries of that?

16:50:24 2 A No. That is true.

16:50:25 3 Q And you would think in order to leave a mark on a
16:50:28 4 human skull, that would have been one powerful impact,
16:50:31 5 right?

16:50:31 6 A Yes.

16:50:31 7 Q Okay.

16:50:32 8 A Well, it created all the fractures you see around
16:50:35 9 it. It could have.

16:50:36 10 Q It didn't fracture the bone directly around it,
16:50:38 11 correct?

16:50:39 12 A Around the stain?

16:50:41 13 Q Yes.

16:50:41 14 A Correct.

16:50:43 15 Q Thanks.

16:50:44 16 No other questions.

16:50:46 17 THE COURT: Mr. Butner.

16:50:48 18 MR. BUTNER: No further questions, Judge. Thank
16:50:49 19 you.

16:50:49 20 THE COURT: May Dr. Fulginiti be excused as a
16:50:53 21 witness?

16:50:54 22 MR. BUTNER: Judge, I would ask that she be
16:50:56 23 subject to recall.

16:50:58 24 THE COURT: Okay.

16:50:59 25 MR. BUTNER: Thank you.

16:51:00 1 THE COURT: Doctor, you will be excused at this
16:51:02 2 time, anyway, subject to recall. You indicated to me you
16:51:06 3 understand what the rule of exclusion of witnesses means,
16:51:08 4 so you will abide by that, of course.

16:51:10 5 THE WITNESS: Yes.

16:51:10 6 THE COURT: Please watch your step. You are
16:51:12 7 excused at this time.

16:51:13 8 THE WITNESS: Thank you very much.

16:51:14 9 THE COURT: You're welcome.

16:51:15 10 THE WITNESS: Thank you, jury, for your
16:51:17 11 attention.

16:51:18 12 JURORS: Thank you.

16:51:18 13 THE COURT: Ladies and Gentlemen, we will go
16:51:20 14 ahead and take the weekend recess at this time.

16:51:23 15 Please remember the admonition, all aspects
16:51:26 16 of that admonition. We are going to start a little bit
16:51:28 17 later when we come back on Tuesday, August 31st. We will
16:51:32 18 start at 9:30 a.m. on that day. There may be some other
16:51:38 19 matters I need to attend to prior to that, but 9:30 a.m.
16:51:41 20 Please be assembled at that time. We will start as soon
16:51:44 21 as we can after 9:30.

16:51:45 22 So take care. I will see you next Tuesday
16:51:48 23 and we're in recess. Thank you.

24 ---o0o---


25

1 ---o0o---

2 C E R T I F I C A T E

3 I, SANDRA K MARKHAM, Certified Reporter, do
4 hereby certify that the foregoing pages constitute a true
5 and accurate transcript of the proceedings had and
6 testimony given in the hearing of the matter entitled as
7 upon the first page hereof.

8 Dated: September 6, 2010.

9 
10 _____
11 Sandra K Markham, CR, RPR, CSR
12 Certified Reporter
13 Arizona License No. 50001
14
15
16
17
18
19
20
21
22
23
24
25

SANDRA K MARKHAM, CR, RPR
OFFICIAL COURT REPORTER